

EXHIBIT 2

TELEPHONE DEPOSITION OF ROBERT NEAL HUGHES, JANAUARY 6, 2016

Page 1

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF NEW YORK
4
5 PACIFIC EMPLOYERS INSURANCE COMPANY,
6
7 Plaintiff,
8 vs. Civil Action No.: 1:11-CV-0912
9 (TJM/RFT)
10 TROY BELTING & SUPPLY COMPANY,
11 THE HARTFORD INSURANCE COMPANY and
12 ABC COMPANIES 1 through 20,
13 Defendants,
14
15 TROY BELTING & SUPPLY COMPANY,
16 Third-Party Plaintiff,
17 vs.
18 UNIGARD INSURANCE COMPANY, QBE AMERICAS,
19 INC., ST. PAUL FIRE AND MARINE INSURANCE
20 COMPANY, CONTINENTAL CASUALTY COMPANY,
21 FIREMAN'S FUND INSURANCE COMPANY, THE
22 NORTH RIVER INSURANCE COMPANY, CRUM &
23 FORSTER HOLDINGS CORP., LIBERTY MUTUAL
24 GROUP, INC., HARLEYSVILLE GROUP, INC.,
25 HARLEYSVILLE INSURANCE COMPANY, HARLEYSVILLE
INSURANCE COMPANY OF NEW YORK and BERKSHIRE
MUTUAL INSURANCE GROUP,
Third-Party Defendants.
Telephone Deposition of ROBERT NEAL HUGHES, held on
Wednesday, January 6, 2016, taken at the Renaissance Dallas
Richardson Hotel, Conference Room, 900 East Lookout Drive,
Richardson, Texas, 75082, commencing at 10:09 a.m., before Christy
R. Sievert, a CSR, RPR and Notary Public in and for the State of
Texas.

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2 I spoke, I believe it was, with Tim.
3 And after some discussion where I explained
4 our standard operating procedures, I believe
5 I sent a sample copy of our standard
6 agreement, and I was retained.

7 Q. And by "Tim," you mean counsel
8 seated to -- seated to your left at the
9 table here today?

10 A. Yes. Yes, sure.

11 Q. Who's counsel of record in this
12 matter for Troy Belting & Supply Company,
13 correct?

14 A. Yes. Well, I presume that he is,
15 yes.

16 Q. He told you he was, right?

17 A. That's what I've been told. And by
18 the way, I don't think we said it on the
19 record, it's Timothy Brennan.

20 Q. Yes.

21 Can you tell us, after you had a
22 signed agreement from Mr. Brennan on behalf
23 of Troy Belting, what, if anything, you did
24 next?

25 A. And I will -- some of this will

Page 15

1
2 determined that I could and then proceeded to
3 write the report that listed what my opinions
4 are, documented the bases of those opinions
5 and submitted that report to Mr. Brennan for
6 his review.

7 Q. Did you meet with him?

8 A. No. We -- this is the first time
9 we've met, yesterday.

10 Q. And did you meet with him in
11 preparation for your deposition today?

12 A. Yes, yesterday.

13 Q. And how long did you meet with him?

14 A. A couple of hours.

15 Q. Did you meet with him in the
16 afternoon or in the morning?

17 A. In the morning.

18 Q. You said the standard is usually a
19 preponderance of the evidence test in these
20 cases; is that right?

21 A. Right.

22 Q. Are you aware of any other standards
23 that have been applied in lost policy
24 matters?

25 A. I may have been involved in one case

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1
2 have to be based upon what my typical
3 procedures are because I'm not sure I
4 remember every single detail. But I know I
5 asked -- well, I asked particularly early the
6 nature of the case, and then asked him to
7 send me basically all of the physical
8 evidence that they had, documentation that
9 would support the question as to whether the
10 policies in question existed and whether or
11 not we could reconstruct the terms and
12 conditions. And they -- they did so.

13 And a great deal of what they sent
14 me was on disks. I have the disks with me.
15 I don't know whether you want all of them or
16 not, but I have them. I don't have the
17 hard copies. And I examined all of the
18 documentation and reached some conclusions.

19 And in these missing policy cases,
20 almost without exception, the standard of
21 proof is preponderance of the evidence, that
22 is to say more likely than not. And so I
23 reviewed all the documentation, determined
24 whether I could render an opinion that was
25 based on that particular standard, and I

Page 16

1
2 where the standard was clear and convincing
3 evidence, but if so, it's only one. At
4 least as far as my cases are concerned,
5 virtually all of them say for that one, and
6 maybe two, has been preponderance of the
7 evidence.

8 Q. Are you a lawyer, sir?

9 A. No, I'm not.

10 Q. And are you testifying as an expert
11 that -- as to what the standard should be in
12 this case?

13 A. No, I am not. However, I was
14 directed by counsel who retained me that --
15 that my opinion should be determined under a
16 standard of more likely than not, which are
17 the preponderance of the evidence.

18 Q. Right. So counsel instructed you to
19 use a preponderance of the evidence --

20 A. Right.

21 Q. -- standard, correct?

22 A. Right. For -- for the -- my review
23 and my -- and my opinionation, yes.

24 Q. So you're not going to offer an
25 opinion to this court as to whether a



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1
2 preponderance of the evidence standard should
3 be used or some other standard should be
4 used?
5 A. Absolutely not. I mean, the Court
6 will direct that and -- and it -- if the
7 Court directs some other standard, then so be
8 it. But it's not my place to determine what
9 the standard is.
10 Q. Did you consider whether the evidence
11 in this case met the clear and convincing
12 standard?
13 A. I did not.
14 Q. Do you have any opinions about
15 whether the evidence in this case meets a
16 clear and convincing standard?
17 A. I really don't because I haven't
18 examined it really from that standpoint. I
19 mean, there are probably -- I think in a
20 couple of cases in my report, I commented on
21 -- my opinion was without a doubt or with
22 little doubt that had to do with the
23 insurance company -- the INA policy, the St.
24 Paul policy, the Continental Casualty policy,
25 all of those -- those three opinions I

Page 18

1
2 expressed as with little doubt or without a
3 doubt. So I would presume that -- that --
4 I mean, it's not for me to say that they
5 would meet the standard of clear and
6 convincing, but more than likely, they would.
7 Q. Do you have any opinions in this
8 case that have not been set forth in Hughes
9 Exhibit-1, your expert report?
10 A. No, I don't think so.
11 Q. So you're not going to offer any
12 opinions that aren't already set forth
13 somewhere in your expert report that we've
14 marked as Exhibit-1, correct?
15 A. That -- that's correct. Now,
16 sometimes after a deposition things change,
17 new evidence comes to light, and I'm asked
18 to either amend the report or expand on the
19 report, at which time, of course, the rules
20 would have to be observed and you would have
21 to be advised. But as I sit here today, I
22 have no plans to issue any other opinions
23 other than those that are contained in the
24 report.
25 Q. It's my understanding, the fact

Page 19

1
2 discovery has been completed in this case
3 already and that what the parties are doing
4 in this stage in the case is expert
5 discovery, which we're taking the depositions
6 of each other's experts.
7 A. Right.
8 Q. So with that -- with that
9 understanding, do you intend to issue any
10 additional opinions beyond those set forth in
11 Hughes Exhibit-1?
12 A. Right. Well, I don't intend to
13 issue any additional opinions, period.
14 Q. Can you tell us approximately how
15 much time you spent reviewing materials or
16 preparing your opinions in your expert report
17 in this matter?
18 A. Not really. I just -- I would have
19 to guess.
20 Q. I don't want you to guess. What --
21 what I would like you to do is give me an
22 approximation if you can't recall the exact
23 amount.
24 A. So examining the materials and
25 writing the report?

Page 20

1
2 Q. Combined.
3 A. Well, I just -- I'm not going to
4 tell you this is exactly correct, but I
5 would say in the range of 30 to 40 hours.
6 Q. And what's the rate that you charge
7 for your services in this case?
8 A. \$700 an hour.
9 Q. Is your rate the same for office
10 work and for testifying?
11 A. Yes, it is.
12 Q. Your report sets forth Exhibit-C,
13 Documents Reviewed and Considered By Robert
14 Hughes. Do you see that?
15 A. I do.
16 Q. And can you tell us, did you review
17 any other documents in preparation of your
18 opinions and your report that aren't set
19 forth on this Exhibit-C?
20 A. Not that I know of, no.
21 Q. And whether something supports your
22 opinion or doesn't support your opinion, did
23 you review anything that -- in preparing your
24 opinions that isn't on this Exhibit-C?
25 A. No. My practice is to list



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1
2 everything that I reviewed, regardless of its
3 impact on my opinions.
4 Q. So in reviewing the materials that
5 Mr. Brennan sent you in connection with
6 retaining you as an expert in this matter,
7 did you become aware that Troy Belting &
8 Supply Company didn't have any of its
9 insurance policies that had been issued to
10 it, whether they be automobile liability,
11 workers' compensation liability, or liability
12 policies generally from its inception until
13 approximately 1974?
14 A. Yes.
15 Q. And did you also become aware that
16 Troy had been existence -- in existence since
17 sometime in the late 1800s as a business?
18 A. I believe I became -- I was aware
19 of that, yes.
20 Q. So from sometime in the late 1800s
21 until 1974, it's your understanding Troy
22 doesn't have a single copy of any automobile
23 liability policy, workers' compensation
24 liability policy or any other liability
25 policy?

Page 22

1
2 A. Yes, it is.
3 Q. Are you familiar with the phrase
4 "liability policy"?
5 A. Well, sure. I mean, that's a very
6 broad phrase, but I'm familiar with it, yes.
7 Q. What does it mean?
8 A. It means a policy that provides
9 coverage for the named insured's and perhaps
10 other insured's against damages that might be
11 assessed against them arising out of their
12 liability, usually for either bodily injury
13 or property damage.
14 Q. Are there different types of
15 liability policies?
16 A. Yes.
17 Q. Can you list them for us?
18 A. I mean, I can -- I can try.
19 Q. I'd appreciate it.
20 A. Okay. Well, you have -- and how
21 far back do you want to go?
22 Q. Well, Troy was in existence since
23 the late 1800s, and they can't find policies
24 from the late 1800s until 1974. So for that
25 period, what types of liability policies are

Page 23

1
2 you aware existed?
3 MR. BRENNAN: Object to the form.
4 You can go ahead.
5 A. Third-party liability insurance
6 appeared in the United States, oh, arguably
7 in the mid- to late 1800s, and it first
8 appeared as liability of employers for injury
9 to their employees. A little bit later it
10 expanded to include liability for bodily
11 injury to nonemployees, that is to say
12 members of the public.
13 And that -- at that time, it became
14 known as public liability. And, frankly, the
15 nomenclature "public liability" clung to what
16 later became known as bodily injury for a
17 long time. When I entered practice in 1960,
18 people were still talking about they wanted
19 to buy insurance policies that covered PL and
20 PD, meaning public liability and property
21 damage. A little bit later, the PL changed
22 to BI, meaning bodily injury.
23 So as time progressed, the amount of
24 -- the type of coverage that was available
25 expanded, generally following cultural changes

Page 24

1
2 and environmental changes, which expanded the
3 number of exposures that a business had to
4 third-party liability.
5 Earlier, however, when automobiles
6 came into being, the industry very quickly
7 responded by providing liability coverage for
8 injury or damage arising out of the use of
9 the automobile. I'm not sure exactly when
10 that was, but it was, I think, in the early
11 1900s.
12 Eventually, the types of coverage
13 that was available to a business expanded to
14 include -- and, generally, divide -- were
15 divided into two nomenclatures, one being
16 manufacturers and contractors and the others
17 being owners, landlords and tenants.
18 It doesn't take very much
19 concentration to figure out why those two
20 were separated. Manufacturers and contractors
21 were people who were generally involved in
22 operations inherently more dangerous than a
23 dry goods store, let's say, and most of them
24 occurred away from the premises.
25 Owners, landlords and tenants coverage



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<p style="text-align: right;">Page 25</p> <p>1 was, as it described, for people who owned 2 property, who rented property, who were 3 tenants of property, and generally involved 4 classifications that were fairly nonhazardous, 5 such as dry good stores or stores of 6 different kinds. 7 8 Now, at -- then the types of 9 liability coverage really sort of exploded, 10 and you had -- gee, I mean, I -- I wouldn't 11 even attempt to name all the different kinds 12 of liability coverage that's available to a 13 business. But then -- then you began to 14 have coverages that were added that didn't 15 require physical injury or physical damage, 16 and those were called personal injury 17 coverages, and those protected the 18 policyholder against damages that were claimed 19 against them for, say, disparagement of goods 20 or libel or slander, such things that were 21 non injur -- not involved in physical injury. 22 And originally, as liability insurance 23 -- business liability insurance developed, it 24 developed on a monoline basis. It was not 25 expansive like we have today. And so you</p>	<p style="text-align: right;">Page 27</p> <p>1 use of the comprehensive general liability 2 policy, which is now known as the commercial 3 general liability policy, expanded 4 considerably. 5 6 And when I first entered the 7 practice of insurance in 1960, one of the 8 first things I did was to basically expunge 9 all the monoline coverages in the agency and 10 switch all of my clients over to a 11 comprehensive general liability policy because 12 it didn't cost them anything and it gave 13 them the opportunity to expand their coverage 14 and, frankly, gave me the opportunity to sell 15 them some additional insurance without 16 changing their policy. 17 18 Now, other than those sorts of 19 things, of course, you have aircraft 20 liability, you have marine liability, et 21 cetera. I don't know how far you want me 22 to go with that. But I've about exhausted 23 my -- my brain on that subject at the 24 moment. 25 BY-MR.KOTULA: Q. Okay. Do folks generally use the</p>
<p style="text-align: right;">Page 26</p> <p>1 would have manufacturers and contractors 2 coverage, you would have owners, landlords 3 and tenants coverage, et cetera, et cetera. 4 5 In 1941, a gentleman named -- I 6 shouldn't have started that because I won't 7 remember his name. But a gentleman who was 8 the head lawyer for the National Bureau of 9 Casualty Underwriters, E.W. -- I'll think of 10 it in a minute -- promoted and was 11 successful in getting the rating bureaus of 12 the day to join together and develop what 13 became known as the comprehensive general 14 liability policy that was ultimately published 15 for the first time in 1943. 16 17 And what that policy did was to 18 bring the various individual lines, such as 19 manufacturers and contractors, premises and 20 operations, independent contractors, all the 21 various lines of coverage that could be 22 purchased, bring all those together in a 23 single policy where you could buy them on a 24 combined basis. Products -- of course, 25 products-completed operations was one of those coverage lines. And from 1943 forward, the</p>	<p style="text-align: right;">Page 28</p> <p>1 terms "liability policy" and "liability 2 coverage" somewhat interchangeably? 3 4 A. Yes. 5 6 Q. So if someone has a liability 7 policy, they might say that they have 8 liability coverage? 9 10 A. Most likely, yes. And vice versa, 11 actually. If they have liability coverage, 12 they would say they have a liability policy. 13 14 Q. So a manufacturers and contractors 15 policy, or it's sometimes also referred to as 16 an M&C policy -- M&C policy, correct? 17 18 A. Yes. 19 20 Q. That's a liability policy? 21 22 A. It is. And the manufacturers and 23 contractors nomenclature doesn't have anything 24 to do with the type of liability coverage 25 that's provided. It has to do with the type of industry that's -- that's going to be insured. And, in fact, if you're an agent, it directs you to which manual of liability insurance you would use to rate the policy. Because there was a manual for manufacturers and contractors, and there was a manual for</p>



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1
2 OL&T, there was a manual for independent
3 contractors and on and on and on.

4 Q. And so M&C coverage or an M&C policy
5 would be rated typically using payroll as a
6 basis for calculating premium, correct?

7 A. That's -- that's exactly right. The
8 rule -- and by the way, there's really no
9 such thing as M&C coverage, but it's used
10 exactly the way you used it in a fairly
11 cavalier manner. And I probably do it
12 myself. But the -- the -- sorry, what was
13 it that -- that you had said that I was
14 reexplaining?

15 Q. We could have the question read
16 back.

17 MR. BRENNAN: I'm going to object to
18 the form since he doesn't know what he's
19 answering.

20 Can you read the question back,
21 please? Yeah, that's going to be a
22 challenge.

23 COURT REPORTER: I'm sorry. Can I
24 just turn it so he can read it?

25 THE WITNESS: Oh, yeah.

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1
2 Q. So if someone says that a company
3 has a liability policy or liability coverage,
4 do we know if it has an M&C policy, an OL&T
5 policy or a CGL policy?

6 A. Not without some additional
7 information, no.

8 Q. Is there a cost difference between
9 an M&C policy and a CGL policy or an OL&T
10 policy and a CGL policy?

11 A. Not for -- if -- not if the only
12 thing that you're putting on the CGL policy
13 is the same lines of coverage that you would
14 have purchased independently on an M&C or an
15 OL&T policy. But if you -- let's say you
16 have an insured who moves from an M&C policy
17 to a comprehensive general liability policy,
18 they automatically get, for instance,
19 products-completed operations coverage unless
20 they have it removed. And so it's possible
21 that by simply moving to a CGL policy, they
22 get expanded coverage. But if you're just
23 going to take exactly the same coverage
24 that's written on a M&C policy and put it on
25 a CGL policy, the cost is essentially the

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1
2 MR. BRENNAN: Can you read it out
3 loud just to -- so that --

4 THE WITNESS: "And so M&C coverage
5 or an M&C policy would be rated typically
6 using payroll as a basis for calculating
7 premium, correct?"

8 BY-MR.KOTULA:

9 Q. I think you answered that question.

10 A. Well, not really, because I was
11 going to tell you the rule was that -- no,
12 I think that's correct, that M&C -- M&C
13 classifications were generally rated on a
14 payroll basis. Now, some of them, such as a
15 brewery, was -- would be rated on gallons of
16 production, and refineries the same way.
17 But, generally, M&C classifications were rated
18 on a -- on a payroll basis.

19 Q. And I'll just say if anybody needs a
20 break, including our court reporter, you
21 know, just let me know. As long as we're
22 not in the middle of a question that hasn't
23 been answered, I'm glad to accommodate. We
24 will take breaks as well.

25 A. Okay.

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1
2 same. There may be a minor charge, maybe
3 \$50.

4 Q. Well, let's say that an insured has
5 an M&C policy but they don't have all of the
6 other things that are added in to achieve a
7 CGL policy.

8 A. Right.

9 Q. Is the cost in terms of a premium
10 cheaper for that M&C policy that doesn't have
11 all those other things?

12 A. Yes.

13 MR. BRENNAN: Object to the form.

14 THE WITNESS: Sorry.

15 A. Yes.

16 BY-MR.KOTULA:

17 Q. Is it a lot cheaper?

18 A. Well, it depends on when you're
19 talking. If you're talking back in the '40s
20 and '50s, no, nothing was expensive. The --
21 the insurance coverage was remarkably
22 inexpensive. But if you're talking about,
23 say, in the 1990s, most likely if you're
24 talking about a manufacturing company or a
25 distribution company, and you're going from a



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1
2 -- just an M&C policy that covers only
3 premises and operations and you're going to
4 put it on a CGL policy that covers all the
5 lines of coverage, such as products-completed
6 operations, independent contractors, et cetera,
7 yes, it's likely going to be considerably
8 more expensive.

9 Q. Okay. But even in the '40s and the
10 '50s and the '60s, and let's throw in the
11 '70s, there would be a cost difference
12 between an M&C policy that just has M&C
13 coverage and everything else that goes into a
14 CGL policy?

15 A. You did it again. There's no such
16 thing as M&C coverage.

17 Q. Let me rephrase the question.

18 A. All right.

19 Q. Even in the 1940s, 1950s, 1960s, and
20 even 1970s, there would be a cost difference
21 if one bought an M&C policy versus buying a
22 CGL policy if the M&C policy didn't include
23 the other things that go into making up a
24 CGL policy, correct?

25 A. That's right. Assuming that the M&C

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1 contracts with all of our companies, which
2 means that we had underwriting authority as
3 described in our contract. I, for instance,
4 could bind our insurance carriers for a CGL
5 policy with the limits of 100,000 per person,
6 300,000 per accident. That sort of thing.

8 Q. That's for companies that had an
9 agency agreement with you?

10 A. Yes. In Texas -- there's no such
11 thing as a retail broker in Texas. You have
12 to be an agent of the company, and you have
13 to have a contract with that company in
14 order to produce business. So that's why
15 retail producers in Texas are called
16 insurance agents because, in fact, that's
17 what they are.

18 So, yes, and I had -- we had agency
19 contracts. My -- my family's business had
20 agency contracts with actually a lot of
21 insurers because our largest source of income
22 was the sale of crop hail insurance, that is
23 to say covering crops, particularly cotton,
24 for damage from hail. It was a huge, huge
25 industry.

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1 policy covered only premises and operations,
2 and you buy a CGL policy that covers all the
3 things that -- such as products-completed
4 operations, the ones that I named a while
5 ago, yes, there would be a cost differential.

7 Q. Does an M&C policy by itself afford
8 coverage for product liability?

9 A. No, it doesn't.

10 Q. So it doesn't have any product
11 hazard coverage?

12 A. Not -- not unless it's endorsed it.
13 It's possible to endorse it on there. But
14 unlike a CGL policy, it's not automatically
15 included.

16 Q. If your experience -- I guess,
17 strike that.

18 You started out in the insurance
19 industry on the producer side, working as an
20 agent; is that right?

21 A. That's correct.

22 Q. What kind of agent was it, a retail
23 agent? A wholesale agent?

24 A. Our family agency was a retail
25 agency; however, we had general agency

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1 And we -- and the exposures were so
2 gigantic, that we had to have, in some
3 cases, 20 or 30 insurance companies in order
4 to be able to place the coverage. So we --
5 we represented a lot of insurers and had
6 underwriting authority with a lot of them.

8 Q. So how long did you serve as an --
9 as an insurance agent in Texas?

10 A. Twelve years.

11 Q. So that takes us from 1960 to 1972?

12 A. Correct.

13 Q. And were you mainly working with
14 customers who became policyholders in Texas
15 in that practice?

16 A. It depends on what time you're
17 talking about. When I first entered the
18 practice in 1960, I was working with my
19 parents. Actually, my -- our agency went
20 back to 1926. It was founded by my
21 grandfather. And I had grown up in the
22 business, helped out from the time that I
23 was a teenager.

24 But the -- when I entered the
25 business in 1960, what I did was handled



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<p>1 what we called the automobile desk, which</p> <p>2 means that when people bought automobile</p> <p>3 insurance, I -- I counseled with them,</p> <p>4 discussed with them and decided what coverage</p> <p>5 they wanted and eventually issued the</p> <p>6 policies. A little bit later on, of course,</p> <p>7 I became much more widely involved.</p> <p>8</p> <p>9 And my clientele ultimately involved</p> <p>10 manufacturing firms that were domiciled in</p> <p>11 places other than where I lived, mostly the</p> <p>12 Dallas-Fort Worth area. And those</p> <p>13 manufacturing firms had operations all over</p> <p>14 the United States, and in some cases,</p> <p>15 internationally.</p> <p>16 Our largest client was</p> <p>17 Transcontinental Telephone & Electronics, which</p> <p>18 eventually became GTE. And they were the</p> <p>19 third largest telephone company in the</p> <p>20 country. So they were in most states.</p> <p>21 Q. They were based here in Texas?</p> <p>22 A. They were based in -- their base was</p> <p>23 in the Dallas-Fort Worth area, but they had</p> <p>24 locations and operations in probably 40</p> <p>25 states.</p>	<p>1 interested in having the coverage that</p> <p>2 covered their exposures adequately. They</p> <p>3 weren't so concerned about whether it was</p> <p>4 going to cost 30 -- or 40 -- or \$50 or</p> <p>5 \$300 more to get adequate coverage.</p> <p>6</p> <p>7 And you need to recall -- or you</p> <p>8 wouldn't recall, but I need to tell you that</p> <p>9 in the area of 1960 to 1972, the question of</p> <p>10 limits of liability was not an expensive</p> <p>11 issue. You could increase the limits of</p> <p>12 liability on a firm similar to Troy Belting,</p> <p>13 and I had a number of firms that were very</p> <p>14 similar to Troy Belting that were -- that I</p> <p>15 insured, and you could increase their limits</p> <p>16 of liability from, say, to 50,000 to 300,000</p> <p>17 for probably 100 -- to \$150 a year.</p> <p>18</p> <p>19 So it was not -- and as a matter of</p> <p>20 fact, that's one of the things that I</p> <p>21 discovered as a young kid in the insurance</p> <p>22 business, there were seven agencies in our</p> <p>23 little downtown of 13,000 people. Generally,</p> <p>24 because of the huge agricultural premiums</p> <p>25 that were involved, I had to figure out a</p> <p>way to do something better than the other</p>
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<p>1</p> <p>2 Q. Is it safe to say, though, in that</p> <p>3 1960 to 1972 period, you were dealing with</p> <p>4 insurance purchasers who lived in Texas?</p> <p>5 MR. BRENNAN: Objection.</p> <p>6 BY-MR.KOTULA:</p> <p>7 Q. Maybe covering businesses else --</p> <p>8 that had operations in multiple states, but</p> <p>9 the actual buyers were here in Texas?</p> <p>10 MR. BRENNAN: Object to form.</p> <p>11 A. That's generally correct. Yes, I</p> <p>12 had one client that operated in a ski area</p> <p>13 in New Mexico. But generally speaking,</p> <p>14 that's correct.</p> <p>15 BY-MR.KOTULA:</p> <p>16 Q. In your experience working as an</p> <p>17 insurance agent in that time frame, did you</p> <p>18 become aware that customers often made</p> <p>19 decisions based on price or cost?</p> <p>20 A. Sure.</p> <p>21 Q. And that they were looking for a</p> <p>22 cost-benefit type of analysis to that?</p> <p>23 A. If you're talking about commercial</p> <p>24 insured's, which I presume you are, not so</p> <p>25 much. My commercial clientele were vitally</p>	<p>1 guys, the old moss-heads that had been in</p> <p>2 the business forever.</p> <p>3</p> <p>4 And so I determined that I would</p> <p>5 simply adopt a practice of increasing limits</p> <p>6 of liability on my clients' policies</p> <p>7 automatically and sending them the new policy</p> <p>8 with a letter saying: I have increased your</p> <p>9 limits. It cost you \$50. If you don't</p> <p>10 like it, let me know, and I'll take it off.</p> <p>11 Q. Was everybody else doing that?</p> <p>12 A. No.</p> <p>13 Q. So you kind of set yourself apart</p> <p>14 from the rest of the herd?</p> <p>15 A. Well, I tried to. I never have</p> <p>16 anybody turn me down.</p> <p>17</p> <p>18 But back to commercial insured's, of</p> <p>19 course, they were concerned about costs. The</p> <p>20 cost concerns were generally handled in the</p> <p>21 conferences that I would -- had with my</p> <p>22 clients about their renewals, or if I was</p> <p>23 going to sell a new client insurance,</p> <p>24 outlining all the options and alternatives,</p> <p>25 et cetera. And, of course, they were</p> <p>concerned about the cost.</p>



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<p>1</p> <p>2 Q. I mean, there came a point in time</p> <p>3 where you could -- you could sell umbrella</p> <p>4 liability coverage as well --</p> <p>5 A. Exactly.</p> <p>6 Q. -- correct?</p> <p>7 A. And this -- interestingly enough,</p> <p>8 this particular case is a -- is a good</p> <p>9 example of what we did in our agency and</p> <p>10 what a lot of people did. Whereas, they</p> <p>11 were carrying a \$500,000 limit, and when they</p> <p>12 found that they were able to buy an umbrella</p> <p>13 policy, they reduced that limit to 300,000</p> <p>14 because they put an umbrella policy on top</p> <p>15 of that.</p> <p>16 Q. Did everybody -- did everybody in</p> <p>17 every business buy umbrella liability coverage</p> <p>18 when it first became available?</p> <p>19 A. No, they didn't.</p> <p>20 Q. Why not?</p> <p>21 A. Well, because probably insurance</p> <p>22 agents didn't know how to explain it to</p> <p>23 their clients. Because it was not expensive.</p> <p>24 I mean, when umbrella coverage first came out</p> <p>25 and became available, it was before I entered</p>	<p>1</p> <p>2 were putting people in it and kind of</p> <p>3 differentiating yourself from the -- from</p> <p>4 your competitors?</p> <p>5 MR. BRENNAN: Objection.</p> <p>6 BY-MR.KOTULA:</p> <p>7 Q. Is that right?</p> <p>8 A. Well, I hope so, yes.</p> <p>9 Q. So not everybody was -- was doing</p> <p>10 what you were doing?</p> <p>11 A. No, they weren't.</p> <p>12 Q. And some companies wouldn't buy</p> <p>13 umbrella liability coverage because they</p> <p>14 hadn't had an exposure that -- that high,</p> <p>15 correct?</p> <p>16 A. I don't know. I didn't have -- I</p> <p>17 never experienced that.</p> <p>18 Q. As an agent or as a consultant --</p> <p>19 because I think, as I understand your</p> <p>20 background, you started out as an agent, and</p> <p>21 then you did -- well, why don't you tell us</p> <p>22 what you did after you served as an agent</p> <p>23 from 1960 to 1972.</p> <p>24 A. I served as an agent from 1960 to</p> <p>25 1972. And in 1972, I sold the insurance</p>
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<p>1</p> <p>2 the practice of insurance in the mid- to</p> <p>3 late 1950s.</p> <p>4 But by the time I got in the</p> <p>5 insurance business, it was a fairly lively</p> <p>6 issue and gave me, as a person who came out</p> <p>7 with a degree in insurance and an</p> <p>8 understanding of what umbrella policies really</p> <p>9 did, an opportunity to sell them. And one</p> <p>10 of the things that I was able to sell was</p> <p>11 let's reduce your underlying limits, put a \$5</p> <p>12 million umbrella on top of it; although, most</p> <p>13 people didn't buy \$5 million at that time.</p> <p>14 And, you know, at that time, you</p> <p>15 could buy an umbrella for probably in the</p> <p>16 range of \$200 a million. So you could buy</p> <p>17 a \$5 million umbrella for a thousand dollars.</p> <p>18 Q. But everyone didn't buy them?</p> <p>19 A. No, everyone didn't buy them. But</p> <p>20 in my -- in my case, everyone that I offered</p> <p>21 the opportunity to buy them, bought them.</p> <p>22 Q. And, again, you kind of set yourself</p> <p>23 apart from the herd because you were aware</p> <p>24 of about umbrella liability coverage and that</p> <p>25 it was somewhat inexpensive. So you -- you</p>	<p>1</p> <p>2 agency, moved to Dallas and went and joined</p> <p>3 another fellow in a consulting firm called</p> <p>4 RIMCO. That's an acronym, R-I-M-C-O. No,</p> <p>5 it's not an acronym. It's a word. Excuse</p> <p>6 me. And that was strictly a consulting</p> <p>7 firm. We offered advice and counsel for --</p> <p>8 about insurance matters for an hourly fee.</p> <p>9 Q. And how long did you do that?</p> <p>10 A. Six years.</p> <p>11 Q. So that takes us to 1978?</p> <p>12 A. Right. Well, actually, it was</p> <p>13 January of '79.</p> <p>14 Q. And then what did you do?</p> <p>15 A. I formed Robert Hughes Associates,</p> <p>16 Incorporated, and set up my own business.</p> <p>17 Q. And what's the nature of that</p> <p>18 business, when you first started it and</p> <p>19 through today?</p> <p>20 A. When I first started it, it was</p> <p>21 purely an insurance consulting firm, exactly</p> <p>22 like RIMCO, we gave advice and counsel to</p> <p>23 corporate insurers or business insured's for</p> <p>24 a fee. And, you know, what we did was we</p> <p>25 would review their insurance program, write</p>



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<p>1 reports and -- and suggest how they could</p> <p>2 improve their coverage or improve their</p> <p>3 costs. And in some cases, we were retained</p> <p>4 to be their surrogate risk managers on a fee</p> <p>5 basis.</p> <p>6 And that continued for a few years.</p> <p>7 And as the sophistication of our clientele</p> <p>8 grew, we found ourselves having the need to</p> <p>9 design and implement alternative funding</p> <p>10 programs, such as captive insurance companies.</p> <p>11 Our clients, many of -- many of them</p> <p>12 got to the point where they were actually</p> <p>13 larger than some of the insurers that they</p> <p>14 were buying insurance from, and so they</p> <p>15 didn't have a need to buy 300,000 or a 3</p> <p>16 million or whatever their -- their retention</p> <p>17 capability was. And so we opened an</p> <p>18 actuarial practice to respond to that need.</p> <p>19 And we also began implementing and</p> <p>20 designing captive insurance companies, largely</p> <p>21 offshore, but in some cases in Texas, which</p> <p>22 was a fertile field because Texas had a rule</p> <p>23 that they would not charge a certain tax to</p> <p>24 locally domiciled companies that wrote only</p> <p>25</p>	<p>1 do.</p> <p>2 Q. And still do.</p> <p>3 A. And so I fell under the tutelage of</p> <p>4 -- of a gentleman named -- Nichols was his</p> <p>5 last name. I can't remember his first name.</p> <p>6 But --</p> <p>7 Q. At Covington?</p> <p>8 A. At Covington. And that case was the</p> <p>9 Washington Public Power Company case, which</p> <p>10 was very famous and very large, and it went</p> <p>11 on for quite some time.</p> <p>12 So after that, we began continually</p> <p>13 getting requests to provide expert witness</p> <p>14 testimony, and we opened our insurance</p> <p>15 litigation support business. And today that</p> <p>16 makes up about 80 percent of the income of</p> <p>17 the company. We have 26 testifying experts</p> <p>18 all over the country. So that's pretty much</p> <p>19 a thumbnail sketch of Robert Hughes</p> <p>20 Associates.</p> <p>21 Q. Excellent.</p> <p>22 Mr. Hughes, as an agent or a</p> <p>23 consultant or in any capacity, have you ever</p> <p>24 placed any policy of insurance from Jamestown</p> <p>25</p>
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<p>1 Texas employees in the workers' compensation.</p> <p>2 So that gave a captive insurance company at</p> <p>3 that time maybe a 20 percent differential in</p> <p>4 their cost.</p> <p>5 And we set up a -- a management</p> <p>6 side where we actually provided administrative</p> <p>7 services and management services to Texas</p> <p>8 captive insurance companies. So that -- we</p> <p>9 got help consulting, actuarial, and now we</p> <p>10 have captive management.</p> <p>11 And then in -- in two-thousand-and-</p> <p>12 -- no, in 1990, I got a call from one of</p> <p>13 my clients, which at the time was called</p> <p>14 Enserch -- which was basically the TXU, Texas</p> <p>15 Utilities. It was the power company for</p> <p>16 North Texas -- who said that they had a --</p> <p>17 an insurance coverage case that was being</p> <p>18 litigated and they needed an insurance expert</p> <p>19 and wanted to know if I would serve, and I</p> <p>20 said sure. Their -- their attorneys were</p> <p>21 Covington & Burling. And --</p> <p>22 Q. Know them well.</p> <p>23 A. Well, and you know that they had a</p> <p>24 big insurance coverage practice, and still</p> <p>25</p>	<p>1 Mutual Insurance Company?</p> <p>2 A. No. I had never heard of Jamestown</p> <p>3 Insurance Company until this case.</p> <p>4 Q. And the same question about Unigard</p> <p>5 Insurance Company?</p> <p>6 A. Well, no, we never represented</p> <p>7 Unigard, but certainly know them well. But</p> <p>8 I have not placed insurance at Uni -- with</p> <p>9 Unigard.</p> <p>10 Q. So you never assisted a policyholder</p> <p>11 in purchasing a policy of insurance from</p> <p>12 either Jamestown Mutual Insurance Company or</p> <p>13 Unigard Insurance Company?</p> <p>14 A. Well, when you put it that way, yes,</p> <p>15 a lot of my consulting clients bought their</p> <p>16 insurance from Unigard. I can't tell you</p> <p>17 exactly who they were, but a lot of them</p> <p>18 did.</p> <p>19 Q. Can you tell me in what time frame?</p> <p>20 A. Probably most prolifically in the</p> <p>21 time frame from 1973 to the early to</p> <p>22 mid-'80s.</p> <p>23 Q. And can you recall the name of any</p> <p>24 policyholder that bought a Unigard policy</p> <p>25</p>



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1
2 with your assistance?
3 A. No, I can't. No, I can't.
4 Q. Do you recall reviewing Unigard
5 insurance policies in that time frame?
6 A. I do.
7 Q. What types of policies were they?
8 A. For the most part, they were general
9 liability policies. In some cases, they were
10 property policies.
11 Q. Did you ever review any M&C policy
12 issued by Unigard?
13 A. Not that I recall.
14 Q. So as I understand your testimony,
15 before this case, you had never even heard
16 of Jamestown Mutual Insurance Company and you
17 had never reviewed a Jamestown Mutual
18 Insurance Company policy?
19 A. That's correct.
20 Q. And as to Unigard, you believe that
21 you reviewed Unigard CGL policy sometime in
22 the 1973 to early/mid-1980 period?
23 A. That's my belief, yes.
24 Q. But you can't remember any of the
25 names of the -- of your clients or the

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1
2 exactly when Unigard came into existence as
3 Unigard, but --
4 Q. Sir, do you have a library of
5 insurance materials that you maintain?
6 A. I do.
7 Q. Can you tell us about it?
8 A. Well, sure. It's a room about the
9 size of this room. The walls are covered
10 with books and -- and folders with documents
11 in it, and they go up about eight feet.
12 And that contains a large number of
13 textbooks.
14 Oh, by the way, sorry, we just
15 opened another room in our library where we
16 put all of our -- our Appleman and Couch
17 library, which is considerably large.
18 But in the other libraries, we have
19 textbooks, treatises, general books that have
20 been published to support the insurance
21 industry in general. We have the
22 International Risk Management Institute books;
23 however, we switched over to those in --
24 electronically.
25 We have -- we have a huge section

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1
2 policyholders that purchased those policies?
3 A. I cannot.
4 Q. And were those Unigard policies
5 primary CGL, or were they something else?
6 A. Probably both primary and excess.
7 Q. Had you ever seen a policy issued by
8 Jamestown Mutual Insurance Company before this
9 case?
10 A. No.
11 Q. And as to Unigard, you've -- you
12 just told us you'd -- you'd reviewed CGL
13 policies and perhaps excess policies that
14 Unigard issued in that '73 to early/mid-1980s
15 period?
16 A. That's what I said. But I believe
17 I also told you that I reviewed some
18 property policies as well.
19 Q. Right, and some property policies.
20 A. And at one point in time, Unigard
21 was, at least in our area, a very prolific
22 provider of CGL coverage, and that would have
23 been in that same period of time. So we --
24 we had a lot of clients who bought insurance
25 from the Unigard companies. I'm not sure

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1
2 devoted entirely to the London Non-Marine
3 Association production that we were fortunate
4 to come by when the clients for London in
5 the Union Oil Company case produced all of
6 their documentation without a -- without a
7 nondisclosure agreement. So they became
8 immediately available in the public domain,
9 and we have all of those.
10 And then we have a large block of
11 what we call drafting history, which is
12 documents, largely minutes and correspondence
13 from and between the participants in the
14 joint drafting of the various policies going
15 as far back as 1943. And let's see. Have
16 I left something out?
17 Q. What about insurance policies, do you
18 have insurance policies?
19 A. Yes, we do. We have about 6,000
20 insurance policies.
21 Q. And are those issued by numerous
22 insurance companies?
23 A. Yes.
24 Q. Are they issued to specific
25 insured's, or are they specimen forms?



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<p>1</p> <p>2 A. No, they're issued to specific</p> <p>3 insured's.</p> <p>4 Q. Did you check that collection of</p> <p>5 6,000 or so insurance policies to see if you</p> <p>6 had any policies issued by Jamestown Mutual</p> <p>7 Insurance Company?</p> <p>8 A. I sure did.</p> <p>9 Q. Did you have any?</p> <p>10 A. No.</p> <p>11 Q. Did you check that collection of</p> <p>12 over 6,000 policies to see if you had any</p> <p>13 policies issued by Unigard Insurance Company?</p> <p>14 A. I did not. I know that we do, but</p> <p>15 I didn't think that to be necessarily</p> <p>16 pertinent. I was looking primarily for</p> <p>17 Jamestown.</p> <p>18 Q. So you didn't review your collection</p> <p>19 for anything having to do with Unigard?</p> <p>20 A. I did not.</p> <p>21 Q. So as you sit here now, you can't</p> <p>22 say for sure you have Unigard policies?</p> <p>23 A. No, I can't tell you for sure. I'm</p> <p>24 almost certain that we do, but I can't tell</p> <p>25 you that for sure.</p>	<p>1</p> <p>2 A. Right.</p> <p>3 Q. -- "CGL, issued by Jamestown Mutual</p> <p>4 Insurance Company."</p> <p>5 A. That's right. And it's a '62 -- a</p> <p>6 '62 policy. That's what I was thinking of.</p> <p>7 And it is a CGL. So the answer to your</p> <p>8 question is that I don't believe that I have</p> <p>9 ever seen a Jamestown M&C policy.</p> <p>10 Q. Have you seen a Unigard Insurance</p> <p>11 Company M&C policy?</p> <p>12 A. I'm sure I have, but I don't recall</p> <p>13 specifically.</p> <p>14 Q. Mr. Hughes, is it your opinion that</p> <p>15 an M&C policy that doesn't have an</p> <p>16 endorsement adding in products hazard coverage</p> <p>17 does not afford coverage for products hazard</p> <p>18 or product liability claims?</p> <p>19 A. As you have stated it, that's</p> <p>20 correct. I mean, if there's not some other</p> <p>21 intervening issue that automatically would add</p> <p>22 under certain circumstances products liability.</p> <p>23 But, generally, you're correct, if you have</p> <p>24 an unadorned M&C policy, you have to actually</p> <p>25 endorse that policy to provide</p>
Page 54	Page 56
<p>1</p> <p>2 Q. Have you ever seen a Jamestown</p> <p>3 Mutual Insurance Company M&C policy?</p> <p>4 A. Well, I think I told you earlier I</p> <p>5 had never seen a Jamestown insurance policy,</p> <p>6 period.</p> <p>7 Q. Well, I asked you as of today, have</p> <p>8 you ever seen a Jamestown Mutual Insurance</p> <p>9 Company M&C policy?</p> <p>10 A. Oh, as of today?</p> <p>11 Q. Yeah.</p> <p>12 A. Well, we did have one exemplar</p> <p>13 policy, and I can't remember whether it was</p> <p>14 an M&C or an OL&T -- I mean, or a CGL.</p> <p>15 Q. Do you want to take a look?</p> <p>16 A. Yeah.</p> <p>17 Q. And just -- you're -- you're looking</p> <p>18 at the exhibits to your report?</p> <p>19 A. I am. I know it's mentioned in the</p> <p>20 body of the report, so -- in the exemplar</p> <p>21 section.</p> <p>22 Q. I see a reference on page 13 of</p> <p>23 your report that, "The documentation I</p> <p>24 reviewed includes a copy of a comprehensive</p> <p>25 general liability policy" --</p>	<p>1</p> <p>2 products-completed operations.</p> <p>3 Q. So without such an endorsement adding</p> <p>4 in coverage for products hazard coverage, an</p> <p>5 M&C policy affords no coverage for product</p> <p>6 liability claims?</p> <p>7 A. Correct.</p> <p>8 Q. And no coverage for asbestos products</p> <p>9 bodily injury claims?</p> <p>10 A. If it's a products liability</p> <p>11 exposure, that's correct.</p> <p>12 Q. Have you personally, as you sit here</p> <p>13 today, ever seen a Jamestown Mutual Insurance</p> <p>14 Company M&C policy endorsement adding in</p> <p>15 coverage for products hazard?</p> <p>16 A. I have not. And let me just step</p> <p>17 back one step and make sure that -- that</p> <p>18 I've given you the right answer. The way</p> <p>19 you structured your question assumed, I</p> <p>20 think, that all asbestos liability exposures</p> <p>21 is a products liability exposure, and that's</p> <p>22 not correct.</p> <p>23 Q. I wasn't saying that.</p> <p>24 A. I know you weren't intending to say</p> <p>25 that, but you did say that. So I want to</p>



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<p style="text-align: right;">Page 57</p> <p>1</p> <p>2 make it clear that if the products liability</p> <p>3 -- if the exposure -- the asbestos exposure</p> <p>4 that caused the injury was an operations or</p> <p>5 premises exposure, yeah, you'd have coverage</p> <p>6 under an M&C policy.</p> <p>7 Q. Right. But that's because an M&C</p> <p>8 policy affords coverage for premises</p> <p>9 operations but doesn't cover for product</p> <p>10 liability coverage occurring away from the</p> <p>11 premises; is that right?</p> <p>12 A. That -- if it's not been endorsed to</p> <p>13 do so, that's correct.</p> <p>14 Q. And you can't say for sure that</p> <p>15 Jamestown Mutual or Unigard used an</p> <p>16 endorsement adding in product liability</p> <p>17 coverage, can you?</p> <p>18 A. I can't say much of anything for</p> <p>19 sure. That's not the standard that -- that</p> <p>20 I'm -- have to adhere to. So you're</p> <p>21 correct.</p> <p>22 Q. And you've never seen either company</p> <p>23 use such an endorsement?</p> <p>24 A. No, I haven't. I've never seen</p> <p>25 Jamestown use any endorsement.</p>	<p style="text-align: right;">Page 59</p> <p>1</p> <p>2 lay opinion, but I think that -- I think</p> <p>3 that's correct, that it would be.</p> <p>4 Q. And is -- in some cases, when you</p> <p>5 have an actual piece of the policy, is that</p> <p>6 better evidence sometimes than -- than</p> <p>7 secondary evidence?</p> <p>8 MR. BRENNAN: Object to the form.</p> <p>9 A. Depends on what it is. It depends</p> <p>10 on what your secondary evidence is. In some</p> <p>11 cases, secondary evidence is -- is almost as</p> <p>12 reliable as the actual copy of the policy.</p> <p>13 So it just depends on what it is.</p> <p>14 BY-MR.KOTULA:</p> <p>15 Q. Well, you don't believe that you'd</p> <p>16 rather have secondary evidence than the</p> <p>17 actual policy, do you?</p> <p>18 MR. BRENNAN: Object to the form.</p> <p>19 A. Once again, it depends on what the</p> <p>20 secondary evidence is. In a lot of cases I</p> <p>21 have seen secondary evidence, which is an</p> <p>22 actual copy of the policy itself, and all</p> <p>23 you -- you don't have, let's say, for</p> <p>24 instance, a signature page. Now, is that</p> <p>25 better than having the original policy? No,</p>
<p style="text-align: right;">Page 58</p> <p>1</p> <p>2 Q. I'm not so sure. We'll get to that</p> <p>3 in a second.</p> <p>4 A. I mean, the endorsement that we have</p> <p>5 in this case, but prior to this case.</p> <p>6 Q. Right.</p> <p>7 MR. KOTULA: Can we take a short</p> <p>8 break?</p> <p>9 (Whereupon, break taken, 11:09 a.m.</p> <p>10 to 11:19 a.m.)</p> <p>11 BY-MR.KOTULA:</p> <p>12 Q. Mr. Hughes, in your work being</p> <p>13 retained as a lost policy expert, is there</p> <p>14 something called primary evidence? Have you</p> <p>15 used that term, primary evidence?</p> <p>16 A. There is. But when I'm working in</p> <p>17 lost policy cases, I don't have primary</p> <p>18 evidence usually.</p> <p>19 Q. What is primary evidence?</p> <p>20 A. Well, it's a copy of the policy.</p> <p>21 Q. And if you have a part of a policy,</p> <p>22 is that part of the policy primary evidence</p> <p>23 of the policy?</p> <p>24 A. I guess that's really a legal</p> <p>25 question. So I can only give you my lay --</p>	<p style="text-align: right;">Page 60</p> <p>1</p> <p>2 it isn't.</p> <p>3 BY-MR.KOTULA:</p> <p>4 Q. Sir, how many times have you been</p> <p>5 retained to serve as an expert on lost</p> <p>6 policy issues?</p> <p>7 A. I haven't counted lately, but I</p> <p>8 think it's about 60 -- 60 times.</p> <p>9 Q. Give or take a few?</p> <p>10 A. Give or take a few.</p> <p>11 Q. And that's just lost policy, not</p> <p>12 other issues?</p> <p>13 A. Right. And -- and I think it's</p> <p>14 probably good to clarify at this point what</p> <p>15 I do actually do, because this generally</p> <p>16 falls into a category that people call</p> <p>17 insurance archaeology. But what I do not do</p> <p>18 is get -- put on a hardhat and go and look</p> <p>19 in old, smelly basements for copies of</p> <p>20 evidence.</p> <p>21 What I do is I take the evidence</p> <p>22 that has been discovered and do what is</p> <p>23 better explained as reconstruction work; in</p> <p>24 other words, taking what -- what have you</p> <p>25 got and what can I tell you about whether</p>



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<p>1 the policy existed and what the terms were.</p> <p>2 Q. So you don't dig the bones out, so</p> <p>3 to speak, like, an archaeologist?</p> <p>4 A. I do not.</p> <p>5 Q. You leave that to others?</p> <p>6 A. That's correct. Sometimes we find</p> <p>7 things by accident, but that's really not our</p> <p>8 primary concern. We -- we leave that to</p> <p>9 firms like Insurance Archaeology Group or</p> <p>10 R.M. Fields.</p> <p>11 Q. So folks like Troy Belting, they</p> <p>12 don't hire you to do footwork or legwork to</p> <p>13 go to customers of theirs or to places where</p> <p>14 maybe some secondary evidence might be found.</p> <p>15 They rely on other -- other folks to do</p> <p>16 that. And then whatever they find, they</p> <p>17 bring to you and they say: What do you</p> <p>18 make of this?</p> <p>19 A. Exactly.</p> <p>20 Q. Is that right?</p> <p>21 A. Yes.</p> <p>22 Q. Have your opinions on lost policy</p> <p>23 ever been excluded because they were found by</p> <p>24 a court to be unreliable?</p> <p>25</p>	<p>1 Q. Which was just affirmed about two</p> <p>2 months ago by the Tenth Circuit Court of</p> <p>3 Appeals?</p> <p>4 A. I didn't know that, but --</p> <p>5 Q. So is it your understanding that the</p> <p>6 district court excluded your expert opinion</p> <p>7 on lost policy and granted summary judgment</p> <p>8 to the insurer?</p> <p>9 A. That's right.</p> <p>10 Q. And that was -- Montello was an</p> <p>11 asbestos bodily injury case?</p> <p>12 A. That's correct.</p> <p>13 Q. And did it involve product liability</p> <p>14 claims involving asbestos?</p> <p>15 A. You know, I don't remember.</p> <p>16 Q. Was your opinion also excluded in a</p> <p>17 case called Trelleborg Automatic --</p> <p>18 Automotive?</p> <p>19 A. I don't know. I don't think so.</p> <p>20 But if it was, I don't know about it.</p> <p>21 Q. In the Eastern District of Michigan?</p> <p>22 A. I remember Trelleborg, but I don't</p> <p>23 remember it being excluded.</p> <p>24 Q. Okay. It's my understanding it was.</p> <p>25</p>
Page 62	Page 64
<p>1 A. I think in one case in -- in</p> <p>2 Oklahoma my opinions were excluded, and I</p> <p>3 don't know that you would say they were</p> <p>4 unreliable. What happened in that case was</p> <p>5 I had rendered my opinions based upon the --</p> <p>6 the documentation that had been presented to</p> <p>7 me, and shortly after I gave the report to</p> <p>8 the -- the counsel who retained me, he came</p> <p>9 up with a bunch of additional information.</p> <p>10 And so I had to revise my report to say</p> <p>11 that more than likely, the form was either</p> <p>12 Form A or Form B, which in Oklahoma was</p> <p>13 almost exactly the same wording but it was a</p> <p>14 different number.</p> <p>15 And the judge said, well, you know,</p> <p>16 we -- I think Mr. Hughes is speculating</p> <p>17 entirely, and I'm not going to consider his</p> <p>18 -- his opinions. That's the only time I</p> <p>19 know that it's been excluded.</p> <p>20 Q. And that's the Montello case in the</p> <p>21 Western --</p> <p>22 A. You got it.</p> <p>23 Q. -- District of Oklahoma?</p> <p>24 A. You got it.</p> <p>25</p>	<p>1 You gave lost policy opinions in that case</p> <p>2 as well, and the district court in the</p> <p>3 Eastern District of Michigan excluded your</p> <p>4 expert opinions.</p> <p>5 A. You know, it could be and they just</p> <p>6 didn't -- the attorneys didn't tell me. I</p> <p>7 don't know about that.</p> <p>8 Q. Do folks not -- attorneys who retain</p> <p>9 you don't tell you that something happened</p> <p>10 and your opinion --</p> <p>11 A. Sometimes they don't.</p> <p>12 Q. -- was restricted?</p> <p>13 A. Sometimes they don't.</p> <p>14 Q. They told you in Montello?</p> <p>15 A. Well, yes, as a matter of fact, they</p> <p>16 -- they did. And the truth of the matter</p> <p>17 is, my opinions have not -- have only been</p> <p>18 excluded in a very limited number of cases.</p> <p>19 Q. Just as a general proposition, you've</p> <p>20 been retained as an expert witness on lost</p> <p>21 policy issues, you've said by your own count,</p> <p>22 approximately 60 times. Do you know who</p> <p>23 must prove up a policy that's missing or</p> <p>24 lost?</p> <p>25</p>



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<p style="text-align: right;">Page 65</p> <p>1</p> <p>2 MR. BRENNAN: Object to the form.</p> <p>3 A. Well, that, of course, is a legal</p> <p>4 question, but I have a general idea that the</p> <p>5 policyholder has a responsibility of proving</p> <p>6 -- or has the burden to prove that the</p> <p>7 policy existed and to prove at least some of</p> <p>8 the terms and conditions.</p> <p>9 And that last part is unclear to me</p> <p>10 exactly what that means, but it's been</p> <p>11 explained to me by a number of people,</p> <p>12 including federal judges, that what it means</p> <p>13 to them is that the policyholder has to</p> <p>14 approve enough of the terms and conditions of</p> <p>15 the policy to allow the Court or the trier</p> <p>16 of fact to determine that the policy would</p> <p>17 have, indeed, covered the claims at issue.</p> <p>18 BY-MR.KOTULA:</p> <p>19 Q. I'm not going to use the word that</p> <p>20 the policyholder has the burden, because it</p> <p>21 presumes or assumes that they were, in fact,</p> <p>22 the policyholder. In a lost policy case,</p> <p>23 that's the issue in dispute. But is it fair</p> <p>24 to say that the party claiming coverage under</p> <p>25 a lost or missing policy has the burden of</p>	<p style="text-align: right;">Page 67</p> <p>1</p> <p>2 A. Well, you -- you often find that you</p> <p>3 have a certain amount of physical evidence,</p> <p>4 secondary evidence, which would include --</p> <p>5 and I discuss this in my report,</p> <p>6 correspondence by the various parties, such</p> <p>7 as the agent or broker or the insurance</p> <p>8 company or even other parties that --</p> <p>9 inquiring about the coverage.</p> <p>10 You often can find court records</p> <p>11 that would mention the policy at issue and</p> <p>12 describe certain of the coverages. If you're</p> <p>13 talking about a primary policy, you may find</p> <p>14 that there are excess policies that were</p> <p>15 contemporaneous with the policy that reference</p> <p>16 certain parts of the policy, such as limits</p> <p>17 of liability and policy dates and policy</p> <p>18 numbers. I think we've discussed that you</p> <p>19 may find that you have an incomplete copy of</p> <p>20 the policy, parts of the policy.</p> <p>21 And then you may find that you have</p> <p>22 anecdotal evidence when you have people that</p> <p>23 were involved in dealing with the insurance</p> <p>24 who can speak from their memory as to</p> <p>25 whether the policy existed and what the</p>
<p style="text-align: right;">Page 66</p> <p>1</p> <p>2 proving the policy?</p> <p>3 MR. BRENNAN: Object to the form.</p> <p>4 A. Once again, that's a -- that's a</p> <p>5 legal question, but that is my understanding.</p> <p>6 And I'm glad you clarified that because it's</p> <p>7 not always the policyholder that's seeking</p> <p>8 coverage under the policy.</p> <p>9 BY-MR.KOTULA:</p> <p>10 Q. Do you have an understanding of what</p> <p>11 a party claiming coverage under a policy</p> <p>12 that's lost or missing must prove?</p> <p>13 MR. BRENNAN: Object to the form.</p> <p>14 A. Well, I thought I told you what my</p> <p>15 understanding was. They have to prove that</p> <p>16 the policy, indeed, existed, and that they</p> <p>17 have to prove a sufficient amount of the</p> <p>18 terms and conditions of that policy that</p> <p>19 would allow the trier of fact to make a</p> <p>20 determination as to coverage.</p> <p>21 BY-MR.KOTULA:</p> <p>22 Q. If someone doesn't have a copy of</p> <p>23 the alleged policy, what types of evidence</p> <p>24 might a party claiming coverage under the</p> <p>25 lost or missing policy rely upon?</p>	<p style="text-align: right;">Page 68</p> <p>1</p> <p>2 coverage was, presuming, of course, they are</p> <p>3 alive. And I would include written anecdotal</p> <p>4 evidence, if there is such a thing. But</p> <p>5 written discussions about the coverage in</p> <p>6 that section -- in that segment. Often</p> <p>7 you'll find in archaic records various</p> <p>8 correspondence between people who were dealing</p> <p>9 with the coverage at the time.</p> <p>10 That, generally, is what you're</p> <p>11 talking about.</p> <p>12 Q. I'm going to get into that in a</p> <p>13 little more detail, but I just wanted to</p> <p>14 elicit sort of a general understanding.</p> <p>15 Can you tell us what the essential</p> <p>16 terms of an insurance policy are that must</p> <p>17 be shown?</p> <p>18 MR. BRENNAN: Object to form.</p> <p>19 A. No, I can't.</p> <p>20 BY-MR.KOTULA:</p> <p>21 Q. Well, is it essential to know the</p> <p>22 type of policy that may have been issued?</p> <p>23 MR. BRENNAN: Object to form.</p> <p>24 BY-MR.KOTULA:</p> <p>25 Q. The type of coverage grant that may</p>



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<p style="text-align: right;">Page 69</p> <p>1</p> <p>2 have been given?</p> <p>3 MR. BRENNAN: Object to form.</p> <p>4 A. Well, I think in terms of what is</p> <p>5 essential is going to be determined by the</p> <p>6 -- by the court that's involved. And you --</p> <p>7 you may -- as in the case of the Montello</p> <p>8 case, that -- that judge decided that what</p> <p>9 he wanted to see was every bit of the terms</p> <p>10 and conditions of the policy and he didn't</p> <p>11 want any equivocation as to what might be in</p> <p>12 the policy. And if you had to do that,</p> <p>13 then he threw it all out.</p> <p>14 On the other hand, you have certain</p> <p>15 judges who are happy if they -- if they see</p> <p>16 evidence of the date the policy was in</p> <p>17 effect, the type of coverage that the policy</p> <p>18 provided, and in most cases, the policy</p> <p>19 limits.</p> <p>20 Now, in cases where the only thing</p> <p>21 at issue is the defense cost, policy limits</p> <p>22 are immaterial, so you don't have to worry</p> <p>23 about the policy limits.</p> <p>24 BY-MR.KOTULA:</p> <p>25 Q. Now, in this case, it's my</p>	<p style="text-align: right;">Page 71</p> <p>1</p> <p>2 or product hazard coverage?</p> <p>3 MR. BRENNAN: Object to the form.</p> <p>4 A. You know, I -- I've looked at</p> <p>5 thousands of them, and sitting here today, I</p> <p>6 really can't tell you. I don't remember</p> <p>7 whether it actually excludes products</p> <p>8 coverage.</p> <p>9 BY-MR.KOTULA:</p> <p>10 Q. But either way, it's your testimony</p> <p>11 and your opinion that an M&C policy that</p> <p>12 isn't endorsed to add in coverage for product</p> <p>13 liability or product hazard doesn't cover</p> <p>14 product hazard or product liability claims?</p> <p>15 A. That's right.</p> <p>16 Q. All right.</p> <p>17 A. You know, in retrospect, I think --</p> <p>18 I think it does exclude exposures to</p> <p>19 products-completed operations.</p> <p>20 Q. So that's a standard exclusion in</p> <p>21 the M&C policy?</p> <p>22 A. I believe that's right, yes.</p> <p>23 Q. Okay. Mr. Hughes, have you ever</p> <p>24 spoken with anyone at Troy Belting with</p> <p>25 personal knowledge of insurance policies that</p>
<p style="text-align: right;">Page 70</p> <p>1</p> <p>2 understanding Troy Belting is incurring both</p> <p>3 defense costs and indemnity costs in</p> <p>4 connection with underlying asbestos bodily</p> <p>5 injury claims. Is that your understanding as</p> <p>6 well?</p> <p>7 A. Yes. So we were talking about the</p> <p>8 essential -- the essential terms.</p> <p>9 Q. Sure.</p> <p>10 A. And so I guess the last point that</p> <p>11 I made was that policy limits may or may not</p> <p>12 be essential terms, but certainly the -- the</p> <p>13 general coverage grant is what does the</p> <p>14 policy say that it covers. And we're</p> <p>15 talking now about the parts of the coverage</p> <p>16 that are the burden of the person that's</p> <p>17 asking for coverage, because it is my</p> <p>18 understanding that if -- that it is the</p> <p>19 insurer's responsibility to prove up any</p> <p>20 limitations of coverage, such as exclusions</p> <p>21 or limiting endorsements.</p> <p>22 Q. Right. Now, does the M&C policy, if</p> <p>23 it doesn't have an endorsement adding in</p> <p>24 product liability coverage or product hazard</p> <p>25 coverage, does it exclude product liability</p>	<p style="text-align: right;">Page 72</p> <p>1</p> <p>2 are allegedly purchased for the 1949 to 1974</p> <p>3 period?</p> <p>4 A. No.</p> <p>5 Q. Have you ever spoken with anyone at</p> <p>6 Troy Belting that told you that they reviewed</p> <p>7 any policies issued to Troy Belting from 1949</p> <p>8 to 1974?</p> <p>9 A. No.</p> <p>10 Q. Have you ever spoken with anyone who</p> <p>11 served as an insurance agent or a broker for</p> <p>12 Troy Belting with personal knowledge of</p> <p>13 insurance policies Troy Belting allegedly</p> <p>14 purchased for the 1949 to 1974 period?</p> <p>15 A. No, I've not spoken with anybody.</p> <p>16 All my information has come from</p> <p>17 correspondence and testimony, et cetera.</p> <p>18 Q. So you haven't spoken with anyone</p> <p>19 who served as an insurance agent or a broker</p> <p>20 for Troy Belting who told you that they</p> <p>21 reviewed any policies issued to Troy Belting</p> <p>22 from 1949 to 1974?</p> <p>23 A. I have not.</p> <p>24 Q. And am I correct from what you've</p> <p>25 just testified about, that you haven't spoken</p>



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<p>1 with anybody who worked for Troy Belting in</p> <p>2 the 1940s, 1950s, 1960s or 1970s?</p> <p>3 A. You are correct.</p> <p>4 Q. And you've never spoken with anyone</p> <p>5 who was involved in purchasing insurance</p> <p>6 policies for Troy Belting in those periods of</p> <p>7 time?</p> <p>8 A. That's correct.</p> <p>9 MR. KOTULA: Mark these as Hughes</p> <p>10 Exhibit-2, please.</p> <p>11 (Whereupon, Exhibit Number-2 marked.)</p> <p>12 MR. KOTULA: Off the record.</p> <p>13 (Whereupon, break taken, 11:37 a.m.</p> <p>14 to 11:39 a.m.)</p> <p>15 BY-MR.KOTULA:</p> <p>16 Q. I'll just state that the court</p> <p>17 reporter has placed before you what she's</p> <p>18 kindly marked as Hughes Exhibit-2 with</p> <p>19 today's date in this case.</p> <p>20 For the record, Hughes Exhibits-2 is</p> <p>21 titled Expert Report of Robert N. Hughes in</p> <p>22 the Northern District of Oklahoma. So if I</p> <p>23 said Western District, I correct myself. It</p> <p>24 was the Northern District of Oklahoma,</p> <p>25</p>	<p>1 Q. It says, "Besides witness memory and</p> <p>2 testimony, this evidence comes in various</p> <p>3 forms, including related policies such as</p> <p>4 those 'above' and 'below' the missing policy,</p> <p>5 those issued before and after the missing</p> <p>6 policy, and other documents referring or</p> <p>7 relating to missing policies such as</p> <p>8 correspondence and exemplar policies."</p> <p>9 Did I read that right?</p> <p>10 A. You did.</p> <p>11 Q. And that -- is that still your</p> <p>12 opinion?</p> <p>13 A. Sure.</p> <p>14 Q. So I think when you were giving me</p> <p>15 a general statement, you mentioned that if --</p> <p>16 if the missing policy was a primary policy,</p> <p>17 that an excess policy above it could have</p> <p>18 significance, correct?</p> <p>19 A. Correct.</p> <p>20 Q. I don't know if you in that general</p> <p>21 discussion mentioned policies that may have</p> <p>22 been issued before and after a missing</p> <p>23 policy?</p> <p>24 A. I probably -- I think you're right,</p> <p>25</p>
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<p>1 federal court, in a case called Canal</p> <p>2 Insurance Company vs. Montello, Inc.,</p> <p>3 M-o-n-t-e-l-l-o. And it is 54 pages,</p> <p>4 including certain exhibits.</p> <p>5 A. Right.</p> <p>6 Q. Have you ever seen what we've marked</p> <p>7 as Hughes Exhibit-2 in this matter?</p> <p>8 A. Sure.</p> <p>9 Q. Can you tell us what it is?</p> <p>10 A. It's my expert report in the Canal</p> <p>11 Insurance Company v. Montello case.</p> <p>12 Q. And that's the case we were talking</p> <p>13 about earlier?</p> <p>14 A. That's right.</p> <p>15 Q. I'm going to ask you to turn to</p> <p>16 page 5 of your report. At the very bottom,</p> <p>17 it's the last sentence that continues over to</p> <p>18 the next page with one word. It says,</p> <p>19 "Besides witness memory and testimony, this</p> <p>20 evidence" -- and you're talking about</p> <p>21 evidence other than actual policies or I</p> <p>22 guess second -- what you would call secondary</p> <p>23 evidence, right?</p> <p>24 A. Correct.</p> <p>25</p>	<p>1 I probably did not.</p> <p>2 Q. But that's another fruitful area for</p> <p>3 -- for someone in your line of work,</p> <p>4 correct?</p> <p>5 A. Yes. And I think in my report you</p> <p>6 would find that reference under the -- the</p> <p>7 patterns of practice section.</p> <p>8 Q. Can you explain the significance of</p> <p>9 evidence of policies of above or below the</p> <p>10 missing policy?</p> <p>11 A. The easiest -- yes. The easiest is</p> <p>12 the ones above because usually policies that</p> <p>13 are written to apply in excess of the policy</p> <p>14 at issue will reference some of the terms</p> <p>15 and conditions of the underlying policy,</p> <p>16 especially if you're talking about an</p> <p>17 umbrella policy that sits on top of the</p> <p>18 primary policy because it's going to almost</p> <p>19 always list the primary policy, the terms --</p> <p>20 term of the policy, the limits of the</p> <p>21 policy, et cetera. It may even contain some</p> <p>22 notations about various coverages that are</p> <p>23 provided by the underlying policy.</p> <p>24 That diminishes a bit as you go up</p> <p>25</p>



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1 the tower of coverage. And when you get way
2 at the top, you have a policy that's simply
3 a following form excess that just says this
4 policy is 10 million excess of 10 million,
5 and it follows form to the underlying policy.

6 **Q. So you're talking about like**
7 **following form excess policies that are sort**
8 **of second or third or fourth or higher**
9 **layers?**

10 **A. Exactly. Exactly.**

11 Now, as far as underlying policies
12 are concerned, those underlying policies may
13 contain information that's pertinent to the
14 missing excess policy search, most
15 importantly, the attachment point. And in
16 most cases, excess policies at least provide
17 following form coverage to the underlying.
18 Even umbrella policies in their Section 1
19 almost always would provide following form
20 coverage.

21 So if you have the underlying
22 policy, that tells you a lot, if not
23 everything, about what's provided in the
24 following form excess policy.
25

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1 usually say to be -- to be advised or have
2 some reference in there that's not specific.

3 But if you presume that you're
4 having a -- let's say it's a renewal and
5 everybody knows what the underlying is, yes,
6 the -- the umbrella policy will normally list
7 the underlying as to what company provides
8 the coverage, as to where the umbrella
9 attaches in terms of limits of liability, the
10 term -- the policy term of the underlying,
11 those sort of things.

12 **Q. It also lists the type of coverage.**
13 **Who has, say, CGL coverage, it will -- in**
14 **the schedule of underlying insurance, an**
15 **umbrella policy can say primary CGL and give**
16 **the name of the insurer and so on, correct?**

17 **A. It may say primary CGL and it may**
18 **not. But, generally, there's an indication**
19 **that it will give you a good idea as to**
20 **what kind of coverage is being provided by**
21 **the underlying policy.**

22 **Q. Let me ask you a more general**
23 **question. Given -- I know how umbrella**
24 **policies work, but an umbrella policy can sit**
25

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1 **Q. So if you have the umbrella policy**
2 **but you're missing the primary policy, let's**
3 **talk about that scenario for --**

4 **A. Okay.**

5 **Q. -- for the time being. And let's**
6 **assume you have the whole umbrella policy.**
7 **If you have the whole umbrella policy, you**
8 **would expect you have a schedule of**
9 **underlying insurance?**

10 **A. Exactly.**

11 **Q. And that schedule would identify the**
12 **name of the underlying insurer who had the**
13 **primary policy, correct?**

14 **A. Well, what's included in the schedule**
15 **of underlying varies between insurers. But,**
16 **generally, you'll have at least the name of**
17 **the underlying -- well, that's not exactly**
18 **correct, because it depends a lot as to when**
19 **-- at what point in the negotiations for**
20 **coverage these policies were placed.**

21 Because if it's a new umbrella, a
22 lot of times it would have been negotiated
23 for and agreed to and actually issued before
24 the primary is even in place. So it will
25

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1 above several different policies, correct?
2 It can provide extra limits above a primary
3 CGL, an auto policy. It can be even be
4 above employer's liability coverage?

5 **A. That's right.**

6 **MR. BRENNAN: Object to the form.**
7 **BY-MR.KOTULA:**

8 **Q. Right? And so a schedule of**
9 **underlying insurance that says how that**
10 **umbrella policy -- what coverage it affords**
11 **might, say, break out the different coverages**
12 **it sits over?**

13 **A. Well, that's exactly correct. And**
14 **in large insured's, complicated and complex**
15 **insured's, that list, if it's complete --**
16 **which, frankly, it seldom is -- but if it's**
17 **complete, you can have a whole lot of**
18 **different kinds of coverages. You might have**
19 **aircraft coverage. You might have watercraft**
20 **coverage, et cetera, et cetera.**

21 **Q. Errors -- errors and omissions,**
22 **possibly. Although, the umbrella often**
23 **doesn't --**

24 **A. That's correct.**
25



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<p>1</p> <p>2 Q. -- doesn't go over that.</p> <p>3 But the schedule of underlying</p> <p>4 insurance could go on for pages in an</p> <p>5 umbrella policy?</p> <p>6 A. Well, in fact, it could, yes.</p> <p>7 Q. And if you're talking about a big</p> <p>8 company, like an Exxon Mobile, you're going</p> <p>9 to have a schedule of underlying insurance</p> <p>10 that's going to be -- to be almost like a</p> <p>11 phone book, potentially?</p> <p>12 A. Exactly. Exactly.</p> <p>13 Q. Sometimes the umbrella policy can</p> <p>14 reference a policy number in the underlying?</p> <p>15 A. Exactly.</p> <p>16 Q. Right?</p> <p>17 A. Absolutely, yes.</p> <p>18 Q. And that can be significant</p> <p>19 information for someone in your line of work,</p> <p>20 correct?</p> <p>21 A. Yes. It's not always true that that</p> <p>22 policy number and that policy that's</p> <p>23 referenced in the schedule of underlying is</p> <p>24 still in effect. But, yes, that is --</p> <p>25 that's important. That's the reason that I</p>	<p>1</p> <p>2 Q. For you.</p> <p>3 MS. YOUNG: Not so much for me.</p> <p>4 BY-MR.KOTULA:</p> <p>5 Q. I just want to be clear, I'm not</p> <p>6 going to play a game where -- and I'm sure</p> <p>7 Tim was noticing the same thing I was. We</p> <p>8 want -- we want to know what your -- your</p> <p>9 opinions are in this case.</p> <p>10 A. Well, isn't that the way it works,</p> <p>11 you hand me a document and it automatically</p> <p>12 becomes evidence in this policy? Just</p> <p>13 kidding.</p> <p>14 All right. Let me take a quick</p> <p>15 look here.</p> <p>16 Right, the INA policy in this case</p> <p>17 applies -- no, I don't have actually a copy</p> <p>18 of the policies that were issued for</p> <p>19 Jamestown, the excess policies during that</p> <p>20 period that you indicated, '49 to '74.</p> <p>21 Q. So you don't -- in this case, you're</p> <p>22 not aware of any evidence of policies, such</p> <p>23 as umbrella or excess policies, above the</p> <p>24 alleged missing Jamestown Mutual and Unigard</p> <p>25 policies from 1949 to 1974, right?</p>
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<p>1</p> <p>2 said that part of the secondary evidence that</p> <p>3 we consider important is policies that apply</p> <p>4 in excess of the missing policy.</p> <p>5 Q. Right. And you've offered an</p> <p>6 opinion in this case that Jamestown Mutual</p> <p>7 and Unigard issued policies -- primary</p> <p>8 policies to Troy Belting from 1949 to 1974,</p> <p>9 correct?</p> <p>10 A. Right.</p> <p>11 Q. Do you have any evidence or are you</p> <p>12 aware of any evidence of policies above the</p> <p>13 alleged Jamestown Mutual and Unigard policies</p> <p>14 for that -- at any time from 1949 to 1974,</p> <p>15 such as umbrella policies or excess policies?</p> <p>16 A. I don't think so. Well, we have</p> <p>17 the CNA policy that was in effect from</p> <p>18 December 1st, '71 to '74. And so --</p> <p>19 Q. Wait, you're looking at your Montello</p> <p>20 opinion, I think --</p> <p>21 A. Oh, I'm sorry.</p> <p>22 Q. -- which we've marked as Hughes</p> <p>23 Exhibit-2.</p> <p>24 A. That would have been nice, wouldn't</p> <p>25 it?</p>	<p>1</p> <p>2 A. I believe that's correct.</p> <p>3 Q. Yeah, it's not -- it's not a trick</p> <p>4 question. If it was in there, I wouldn't</p> <p>5 have asked that question. You know, you're</p> <p>6 -- the record will just reflect Mr. Hughes</p> <p>7 is reviewing his report. You can take all</p> <p>8 the time you would like to see if you have</p> <p>9 -- if you see something different than what</p> <p>10 you just testified to.</p> <p>11 A. No, I believe you completely. I'm</p> <p>12 just frustrated that I can't find it right</p> <p>13 now. Ah -- no, never mind. You're right.</p> <p>14 That's correct.</p> <p>15 Q. There is no evidence of any policies</p> <p>16 above this missing gap of 1949 to 1974,</p> <p>17 right?</p> <p>18 A. I think that's correct.</p> <p>19 Q. Okay. And as we saw in your</p> <p>20 Montello report, you said sometimes in the</p> <p>21 lost policy case, you can have policies that</p> <p>22 are issued before or after the missing</p> <p>23 policy, right?</p> <p>24 A. Right.</p> <p>25 Q. So you actually have the policy</p>



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<p style="text-align: right;">Page 85</p> <p>1</p> <p>2 issued before that -- that gap and you have</p> <p>3 the policy after that gap --</p> <p>4 A. Exactly.</p> <p>5 Q. -- right?</p> <p>6 And can you explain the significance</p> <p>7 of that type of evidence?</p> <p>8 A. The significance, of course -- of</p> <p>9 course, depends on what it is. The most --</p> <p>10 excuse me. The most significant type would</p> <p>11 be if those two policies were identical.</p> <p>12 You've got --</p> <p>13 Q. The before and after?</p> <p>14 A. -- the one before and the one after,</p> <p>15 and they're identical, that -- I mean, it's</p> <p>16 pretty much a gut cinch that the one in</p> <p>17 between would be the same.</p> <p>18 Q. Is that called the picket fence</p> <p>19 argument? Have you used that expression to</p> <p>20 describe it, like a picket fence?</p> <p>21 A. No, I --</p> <p>22 Q. You've got the fence on one side of</p> <p>23 the gap and you have the fence on the other</p> <p>24 side and the limits are the same, and, you</p> <p>25 know, you're just missing this one picket, so</p>	<p style="text-align: right;">Page 87</p> <p>1</p> <p>2 MR. BRENNAN: Can I have a copy,</p> <p>3 please? Not that I don't trust you. I</p> <p>4 just want to follow along.</p> <p>5 A. And, actually, if you have a copy, I</p> <p>6 would love to see it.</p> <p>7 BY-MR.KOTULA:</p> <p>8 Q. No worries. We'll mark it.</p> <p>9 MR. KOTULA: What are we up to, 3?</p> <p>10 (Whereupon, Exhibit Number-3 marked.)</p> <p>11 A. Thank you.</p> <p>12 BY-MR.KOTULA:</p> <p>13 Q. You're welcome.</p> <p>14 MR. BRENNAN: Where are you reading</p> <p>15 from?</p> <p>16 BY-MR.KOTULA:</p> <p>17 Q. So I'm looking at the bottom of page</p> <p>18 91, and you were asked, line 22, "And what</p> <p>19 is the significance, or can you explain to</p> <p>20 me the significance of policies issued before</p> <p>21 or after a missing policy?"</p> <p>22 And you -- you testified in</p> <p>23 Montello, "In many cases, particularly if the</p> <p>24 evidence that you have comes from the</p> <p>25 underwriting files of the insurance carrier,</p>
<p style="text-align: right;">Page 86</p> <p>1</p> <p>2 you say, well, probably was just like the</p> <p>3 one before it and the one after it?</p> <p>4 MR. BRENNAN: Object to form.</p> <p>5 MR. FOX: Mike will be your expert.</p> <p>6 A. I don't -- I don't recall using</p> <p>7 that, but would you release me to use it?</p> <p>8 BY-MR.KOTULA:</p> <p>9 Q. I haven't trademarked it, sir.</p> <p>10 A. No, I -- you know, I have used the</p> <p>11 term "bracketing" sometimes. But I don't</p> <p>12 remember using a picket fence reference.</p> <p>13 Q. So I could show you your testimony</p> <p>14 from the Montello case -- or I'll just read</p> <p>15 it to you, and you can tell me if you agree</p> <p>16 with it.</p> <p>17 A. Okay.</p> <p>18 Q. If you want to see it, I'll put it</p> <p>19 in front of you.</p> <p>20 A. I've got it right here.</p> <p>21 Q. No, no, your deposition testimony in</p> <p>22 the case.</p> <p>23 A. Well, why don't you read it to me.</p> <p>24 I trust you.</p> <p>25 Q. So you were asked --</p>	<p style="text-align: right;">Page 88</p> <p>1</p> <p>2 the policy that was issued before the policy,</p> <p>3 missing policy in question would have been</p> <p>4 scratched up, which is a term that means you</p> <p>5 would take the policy and write on it the</p> <p>6 changes that would need to be made at</p> <p>7 renewal and pass that on to the policy</p> <p>8 issuing section. So in many of these cases,</p> <p>9 you have a scratched up copy of an expiring</p> <p>10 policy that gives you an indication as to</p> <p>11 what the terms and conditions of the renewal</p> <p>12 policy were."</p> <p>13 Do you see that?</p> <p>14 A. I do see that. And I kind of</p> <p>15 truncated my answer to your previous question</p> <p>16 and hadn't quite gotten to this when I was</p> <p>17 talking about it was important that you have</p> <p>18 the before and after policies in there</p> <p>19 exactly the same. This is another good</p> <p>20 example that if you have the renewal scratch</p> <p>21 copy, it would give you an idea as to what</p> <p>22 terms and conditions of that policy would</p> <p>23 have been.</p> <p>24 Q. And then you go on to say on page</p> <p>25 92 in the Montello case that we have just</p>



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<p style="text-align: right;">Page 89</p> <p>1 marked as -- as Exhibit-3, "Now, as to the</p> <p>2 policy that's issued chronologically after the</p> <p>3 policy in question, one of -- those policies</p> <p>4 will often have a reference on the</p> <p>5 declarations page that it is a renewal of</p> <p>6 and give you the policy number of the</p> <p>7 previous policy."</p> <p>8 And then you were asked, "If it's</p> <p>9 the same company, it might be a renewal?"</p> <p>10 Answer, "If it's the same company,</p> <p>11 yes. Now, if it's not the same company,</p> <p>12 rarely will -- you will find reference to</p> <p>13 the previous policy from another company, but</p> <p>14 that's not very often."</p> <p>15 Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Stand by that testimony, too?</p> <p>18 A. Sure. I sure do.</p> <p>19 Q. So if you have a policy before the</p> <p>20 missing gap or you don't -- you can't find</p> <p>21 policies and you have a policy after that</p> <p>22 gap that are issued by the same insurer that</p> <p>23 you think issued in the gap, those -- that</p> <p>24 evidence can be quite significant, can it</p> <p>25</p>	<p style="text-align: right;">Page 91</p> <p>1 we do not.</p> <p>2 Q. Right. That was my only question.</p> <p>3 I wasn't asking about the -- the</p> <p>4 correspondence with brokers. I'll get into</p> <p>5 that later. I'm just simply asking you, do</p> <p>6 you have any policy issued from Jamestown</p> <p>7 Mutual Insurance Company or Unigard Insurance</p> <p>8 Company that incepted in 1974 after this gap</p> <p>9 period from 1949 to 1974 that's at issue?</p> <p>10 MR. BRENNAN: Objection. And</p> <p>11 referring to after October of '74, just for</p> <p>12 clarity?</p> <p>13 MR. KOTULA: If that's the gap</p> <p>14 period, yes.</p> <p>15 A. And, I'm sorry, what do you mean by</p> <p>16 "gap period"?</p> <p>17 BY-MR.KOTULA:</p> <p>18 Q. So we're talking about the period</p> <p>19 from 1949 to 1974 when you opine that --</p> <p>20 that Troy Belting doesn't have copies of any</p> <p>21 of its primary insurance policies.</p> <p>22 A. Okay. That's what you mean by</p> <p>23 "gap"?</p> <p>24 Q. And that's the gap period. And then</p> <p>25</p>
<p style="text-align: right;">Page 90</p> <p>1 not?</p> <p>2 A. Absolutely.</p> <p>3 Q. Do you have any of that evidence in</p> <p>4 this case as to the gap from 1949 to 1974?</p> <p>5 A. No.</p> <p>6 Q. So you don't have -- you're not</p> <p>7 aware of any policies issued before 1949 that</p> <p>8 were issued by Jamestown Mutual Insurance</p> <p>9 Company or Unigard Insurance Company that</p> <p>10 were issued to Troy Belting?</p> <p>11 A. I do not.</p> <p>12 Q. And you don't have any policy --</p> <p>13 you're not aware of any policy issued by</p> <p>14 Jamestown Mutual or Unigard starting in 1974</p> <p>15 and continuing thereafter, are you?</p> <p>16 A. Depending on what the statement that</p> <p>17 we rely on where they've said we had -- that</p> <p>18 -- that Unigard provided the coverage from</p> <p>19 1949 to 1974. And if you presume that that</p> <p>20 means that their coverage ended, I believe it</p> <p>21 was in October of 1974, the documentation</p> <p>22 that -- that we have, then if you're saying</p> <p>23 do we have any evidence of their issuing a</p> <p>24 policy after October of 1974, the answer is</p> <p>25</p>	<p style="text-align: right;">Page 92</p> <p>1 I asked are -- you're not aware of any</p> <p>2 evidence that Jamestown Mutual Insurance</p> <p>3 Company or Unigard Insurance Company issued a</p> <p>4 policy after that gap period?</p> <p>5 A. That's correct.</p> <p>6 Q. So you don't have -- in other words,</p> <p>7 Troy Belting doesn't have a copy of an</p> <p>8 insurance policy issued by either Jamestown</p> <p>9 Mutual or Unigard before the gap period prior</p> <p>10 to 1949 or after the gap period in 1974 and</p> <p>11 thereafter?</p> <p>12 A. That's right.</p> <p>13 Q. So you don't have any evidence of</p> <p>14 any policy above that gap period from 1949</p> <p>15 to 1974, and you don't have any evidence</p> <p>16 before or after the gap period of 1974 that</p> <p>17 -- of the type that you sometimes have in a</p> <p>18 lost policy case, right?</p> <p>19 A. Well, we have anecdotal evidence, and</p> <p>20 we have the evidence that the -- that -- the</p> <p>21 letters that we had that indicated that there</p> <p>22 was coverage in that period of time.</p> <p>23 Q. Right, I wasn't asking about that.</p> <p>24 I was asking about do you have policies</p> <p>25</p>



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1 before and after or above, and I think
 2 you've just testified you're not aware of any
 3 policies before or after or above the gap
 4 period from 1949 to 1974?
 5
 6 A. That's right.
 7 Q. We'll get into the broker stuff.
 8 Trust me.
 9 A. Okay. Well, I mean, you -- in the
 10 -- in the asking of your question, you left
 11 out the before and after one time, and I
 12 wanted to make sure we had an understanding.
 13 Q. I think we do. I think it's clear.
 14 Mr. Hughes, sometimes in a lost
 15 policy case an insurer's use of policy
 16 numbers or prefixes may be significant,
 17 correct?
 18 A. Correct.
 19 Q. Can you explain the significance of
 20 this type of evidence?
 21 A. Well, in some cases, insurers use
 22 their policy numbering and prefixes to
 23 identify certain aspects of the policy
 24 itself. For instance, there are -- there
 25 are some insurance companies that use the --

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1 the alpha prefix C, the letter C, to
 2 indicate that it's a third-party liability
 3 policy. Some companies even use the alpha
 4 -- alpha prefix CGL that would clearly
 5 indicate that it's a comprehensive general or
 6 a commercial general liability policy. So
 7 that's often helpful.
 8
 9 MR. KOTULA: Can we mark this as 4.
 10 (Whereupon, Exhibit Number-4 marked.)
 11 BY-MR. KOTULA:
 12 Q. I am showing you now what's been
 13 marked as Hughes Exhibit-4. It's pages 1,
 14 98 and 99 of your oral deposition in the
 15 Montello case. And I'll refer you to page
 16 98, line 21. And the questioner is quoting
 17 from your report, and says, "Now, in the
 18 next paragraph it says, 'The practice pattern
 19 of insurers can also be very enlightening
 20 when trying to establish the terms and
 21 conditions of missing policies. For
 22 instance, many insurers consistently use
 23 policy numbers or prefixes to identify a
 24 particular policy wording so that a person
 25 familiar with this practice can often

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1 identify a particular policy wording simply
 2 by examining the policy number.'"
 3
 4 Do you see that?
 5 A. I do.
 6 Q. And that was -- that was your
 7 opinion in the Montello case, correct?
 8 A. Correct.
 9 Q. And it's -- it's not different from
 10 what you've just told us, that a policy
 11 prefix or a policy numbering system can --
 12 can sometimes tell you something about the
 13 type of coverage afforded by a policy, right?
 14 A. Correct.
 15 (Whereupon, Exhibit Number-5 marked.)
 16 BY-MR. KOTULA:
 17 Q. So I'm showing you now what the
 18 court reporter has kindly marked as Hughes
 19 Exhibit-5.
 20 And for the record, Hughes Exhibit-5
 21 is a one-page document, and it states at the
 22 very top line, Nicoll & MacChesney,
 23 N-i-c-o-l-l & M-a-c-C-h-e-s-n-e-y, Inc., and
 24 then it states, "Amendment of Declarations
 25 Items 4 and 5." And below that it says,

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1 "(Manufacturing and contractors Liab. policy)."
 2
 3 Do you see that?
 4 A. I do.
 5 Q. Have you seen Exhibit-5 before?
 6 A. I have.
 7 Q. And do you see that there is a
 8 reference to amending policy number in the
 9 upper right-hand corner?
 10 A. Yes.
 11 Q. And what's that number?
 12 A. 63-M29311.
 13 Q. Okay. And this endorsement clearly
 14 says, "Manufacturers & Contractors Liab,"
 15 which I'll take to be the abbreviation for
 16 liability, "Policy."
 17 A. And I agree with you.
 18 Q. Okay.
 19 A. And it does contain that, yes.
 20 Q. And there's nothing on the face of
 21 Exhibit-5 that says that it pertains to a
 22 CGL policy, is there?
 23 A. Not that I can see, no.
 24 Q. Okay. In fact, it says the
 25 opposite, it says M&C policy, correct?



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<p style="text-align: right;">Page 97</p> <p>1</p> <p>2 A. Well, I don't know if that's the</p> <p>3 opposite. It says that it says an M&C</p> <p>4 policy.</p> <p>5 Q. Right.</p> <p>6 Now, in your report you talk about</p> <p>7 having looked at a single Jamestown Mutual</p> <p>8 Insurance Company CGL policy. Do you recall</p> <p>9 that?</p> <p>10 A. Yes.</p> <p>11 MR. KOTULA: Mark this as Exhibit-6.</p> <p>12 (Whereupon, Exhibit Number-6 marked.)</p> <p>13 BY-MR. KOTULA:</p> <p>14 Q. Sir, we have placed before you what</p> <p>15 the court reporter has kindly marked as</p> <p>16 Hughes Exhibit-6.</p> <p>17 And I'll state for the record it is</p> <p>18 a document titled, "Comprehensive General</p> <p>19 Liability Policy, Jamestown Mutual Insurance</p> <p>20 Company, Issued to Utica Radiator</p> <p>21 Corporation."</p> <p>22 And can you tell me, have you seen</p> <p>23 this document? Is this what you referred to</p> <p>24 in your expert report?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 99</p> <p>1</p> <p>2 report --</p> <p>3 A. Okay.</p> <p>4 Q. Before I get to that, is it</p> <p>5 sometimes the case that a policy number or a</p> <p>6 policy prefix might indicate to you as a</p> <p>7 lost policy expert the company that may have</p> <p>8 issued the policy?</p> <p>9 A. Yes.</p> <p>10 Q. Can you explain that?</p> <p>11 A. I'm not sure what you mean. The</p> <p>12 fact is that there are companies who very</p> <p>13 consistently used specific alpha prefixes to</p> <p>14 their policy numbers, and those alpha -- I</p> <p>15 never know how to say this. But those alpha</p> <p>16 portions of an alphanumeric policy number are</p> <p>17 very consistent, and having seen a lot of</p> <p>18 them over the years, it will tell me exactly</p> <p>19 what type of policy it was.</p> <p>20 And then in other cases -- I think</p> <p>21 it's interesting that you talk about</p> <p>22 Montello, because, as I recall, we had the</p> <p>23 -- the issue as to whether it was an RDU or</p> <p>24 an RDX. But I think in just in answer to</p> <p>25 your question, yes, there are a lot of</p>
<p style="text-align: right;">Page 98</p> <p>1</p> <p>2 Q. And can you tell me what the policy</p> <p>3 number is that's referenced on this document?</p> <p>4 A. 61-CGL7788.</p> <p>5 Q. All right. So Exhibit-5 has a</p> <p>6 policy number of 63-M29311, and right below</p> <p>7 the title of the endorsement, it says in</p> <p>8 parenthetical, "Manufacturers & Contractors</p> <p>9 Liability Policy," right?</p> <p>10 A. Correct.</p> <p>11 Q. And Exhibit-6 is the comprehensive</p> <p>12 general liability policy that you reviewed</p> <p>13 from Jamestown Mutual, and it has a policy</p> <p>14 number of 61-CGL7788, does it not?</p> <p>15 A. Yes, it does.</p> <p>16 Q. So is this an instance where the</p> <p>17 policy numbering may reflect the type of</p> <p>18 coverage afforded by the policy?</p> <p>19 A. It may very well be.</p> <p>20 Q. We're done with that exhibit.</p> <p>21 Can you turn again to your expert</p> <p>22 report in Montello? I think we marked that</p> <p>23 as Exhibit-2, did we not?</p> <p>24 A. Correct.</p> <p>25 Q. And if you turn to page 12 in that</p>	<p style="text-align: right;">Page 100</p> <p>1</p> <p>2 insurance companies who used prefixes that</p> <p>3 were so specifically consistent, that if you</p> <p>4 see the policy number, you know what kind of</p> <p>5 policy it was.</p> <p>6 Q. For example, I've represented another</p> <p>7 insurance company that's not in this case</p> <p>8 that uses a certain policy prefix, and if</p> <p>9 you saw that policy prefix, it would probably</p> <p>10 tell you that it may be their policy.</p> <p>11 Correct?</p> <p>12 A. Yes. If it was indeed one of those</p> <p>13 that -- that was unique to that company.</p> <p>14 It's interesting that in this case we have</p> <p>15 an RDU prefix, which I told you in my report</p> <p>16 that I thought that the policy that was</p> <p>17 referenced should have an RDU prefix, and in</p> <p>18 the Montello report we're talking about a</p> <p>19 different company that also used the RDU</p> <p>20 prefix. So it doesn't always -- it's not</p> <p>21 always a perfect representation that that</p> <p>22 would be that particular company.</p> <p>23 Q. I think it's the same company. I'm</p> <p>24 not going to do the questioning about the</p> <p>25 RDU in specific. I'm going to allow</p>



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<p style="text-align: right;">Page 101</p> <p>1</p> <p>2 Continental's counsel to --</p> <p>3 A. Oh, you're right.</p> <p>4 Q. -- to get into that. But it's the</p> <p>5 same company or same family of companies.</p> <p>6 A. You're right, it is.</p> <p>7 Q. So is there something about CGL or M</p> <p>8 prefixes in a policy number that is unique</p> <p>9 to a company?</p> <p>10 MR. BRENNAN: Object to the form.</p> <p>11 A. No, I don't think so.</p> <p>12 BY-MR.KOTULA:</p> <p>13 Q. So having a policy number with "CGL"</p> <p>14 in it or "M" in it doesn't tell you it's a</p> <p>15 -- it's a Jamestown Mutual or a -- or a</p> <p>16 Unigard policy?</p> <p>17 A. No, it doesn't.</p> <p>18 MR. KOTULA: We have been going for</p> <p>19 about another hour, so I'm going to suggest</p> <p>20 we take a break now.</p> <p>21 (Whereupon, break taken, 12:12 p.m.</p> <p>22 to 12:24 p.m.)</p> <p>23 MR. KOTULA: We're back on the</p> <p>24 record. I think Tim wanted to make a</p> <p>25 statement.</p>	<p style="text-align: right;">Page 103</p> <p>1</p> <p>2 the policy that were not produced. In</p> <p>3 addition, it also seems to contain additional</p> <p>4 pages that I do not believe were produced</p> <p>5 during discovery.</p> <p>6 As a result of the fact that these</p> <p>7 weren't produced during discovery, Mr. Hughes</p> <p>8 has never seen these -- this exact copy of</p> <p>9 this policy prior to today. And I just want</p> <p>10 to assert that I object to the questioning</p> <p>11 on this copy to the extent that some of</p> <p>12 these pages and some of the information on</p> <p>13 them I do not believe was produced in</p> <p>14 discovery.</p> <p>15 MR. KOTULA: And all I'll say to</p> <p>16 that is that we'll look into that. I wasn't</p> <p>17 counsel when this was produced in the case.</p> <p>18 And as you know, our firm has -- has come</p> <p>19 in as counsel for -- for Unigard and QBE</p> <p>20 after fact discovery was completed. So I --</p> <p>21 I'll look into it, and I'll let you know</p> <p>22 what we find.</p> <p>23 MR. BRENNAN: Okay. And I will</p> <p>24 look into it further, as well. I just want</p> <p>25 to put that on the record. Obviously, I had</p>
<p style="text-align: right;">Page 102</p> <p>1</p> <p>2 MR. BRENNAN: Just for the record, I</p> <p>3 would like to discuss, if I may, very</p> <p>4 briefly, Exhibit-6 from today's deposition,</p> <p>5 which is a copy of the Jamestown Mutual</p> <p>6 Insurance Company -- or purports to be a</p> <p>7 copy of Jamestown Mutual Insurance Company's</p> <p>8 policy issued to Utica Radiator Corporation.</p> <p>9 Mr. Hughes has been asked a series</p> <p>10 of questions about this exhibit. I would</p> <p>11 like to note for the record that it does not</p> <p>12 appear that this is the copy of this policy</p> <p>13 that was produced during discovery in this</p> <p>14 action. In particular, this copy has Bates</p> <p>15 numbers on the bottom right-hand corner of</p> <p>16 the policy that are ECRI followed by a Bates</p> <p>17 number.</p> <p>18 Based upon that and based upon a</p> <p>19 review of the actual policy that's been</p> <p>20 produced, it appears to me, as counsel that's</p> <p>21 been involved in this case, that this is not</p> <p>22 the exact copy of the policy that was</p> <p>23 produced during discovery. In fact, this</p> <p>24 appears, based upon my limited opportunity to</p> <p>25 review it, to contain unredacted portions of</p>	<p style="text-align: right;">Page 104</p> <p>1</p> <p>2 only a very little amount of time to review</p> <p>3 this. And I don't have the full documents</p> <p>4 that were produced to actually compare and</p> <p>5 contrast, but I do not believe that all of</p> <p>6 those pages and all of that information were</p> <p>7 produced.</p> <p>8 BY-MR.KOTULA:</p> <p>9 Q. I do think, Mr. Hughes, that</p> <p>10 whatever you looked at in the form of CGL</p> <p>11 policy issued by Jamestown Mutual Insurance</p> <p>12 Company to Utica Radiator Corporation</p> <p>13 contained the first page of Exhibit-6, which</p> <p>14 is the page with the -- the exhibit stamp.</p> <p>15 So whatever you had, you had that, and I</p> <p>16 think that's what I asked you about.</p> <p>17 MR. BRENNAN: And I want to -- I</p> <p>18 just want to note my objection that I even</p> <p>19 believe that that page contained redactions.</p> <p>20 While he might have it, it contained</p> <p>21 redactions. So we can compare and contrast</p> <p>22 them at some point. But just for the</p> <p>23 record, I want to note that the I believe</p> <p>24 the first page contained redactions.</p> <p>25 MR. FOX: It's not even -- I noted,</p>



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<p>1 Michael, when you marked Exhibit-5, that at</p> <p>2 least my copy doesn't have any Bates numbers</p> <p>3 at all. Do you know why that is?</p> <p>4 MR. KOTULA: No, I don't.</p> <p>5 THE WITNESS: Doesn't have any what?</p> <p>6 MR. FOX: It's just lawyers. Just</p> <p>7 that there are no Bates numbers at the</p> <p>8 bottom.</p> <p>9 THE WITNESS: Oh, there aren't.</p> <p>10 MR. FOX: It's really of no concern.</p> <p>11 BY-MR.KOTULA:</p> <p>12 Q. If you have Exhibit-6 --</p> <p>13 A. I do.</p> <p>14 Q. -- if you could turn to the page</p> <p>15 that has a Bates stamp ending in 16?</p> <p>16 MR. BRENNAN: You said 16?</p> <p>17 MR. KOTULA: Yes, sir.</p> <p>18 BY-MR.KOTULA:</p> <p>19 Q. Do you have that before you?</p> <p>20 A. I do. I have it, yes.</p> <p>21 Q. Okay. And do you see right under</p> <p>22 "Amendment of Declarations Item 3," in</p> <p>23 parentheticals, it says "Comprehensive Gen.</p> <p>24 Liab. Policy"? Which I'll take to be an</p> <p>25</p>	<p>1 abbreviation for liability in Exhibit-6.</p> <p>2 MR. BRENNAN: Fair enough. I</p> <p>3 misunderstood.</p> <p>4 BY-MR.KOTULA:</p> <p>5 Q. So the -- they use different</p> <p>6 nomenclature, correct? One refers to a</p> <p>7 comprehensive general liability policy, and</p> <p>8 it's the one that has the CGL policy prefix.</p> <p>9 And Exhibit-5 uses M, and it's the one that</p> <p>10 says manufacturers and contractors liability</p> <p>11 policy. We looked at that before. Do you</p> <p>12 recall that?</p> <p>13 A. I do recall that. I think it's</p> <p>14 interesting that if you look at the ECRI</p> <p>15 000016 page and compare it with the</p> <p>16 Exhibit-5, the CGL policy apparently did not</p> <p>17 have products liability in the beginning and</p> <p>18 was added by endorsement, which is the 16</p> <p>19 page. And if you look at the -- the</p> <p>20 schedules, you'll see that they're virtually</p> <p>21 identical in terms of division of hazards.</p> <p>22 So the fact is that if, indeed, the</p> <p>23 policy that was represented as 63-M29311 was</p> <p>24 a manufacturers and contractors policy, that</p> <p>25</p>
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<p>1 abbreviation for comprehensive general</p> <p>2 liability policy.</p> <p>3 A. I do.</p> <p>4 Q. And contrast that with Exhibit-5,</p> <p>5 which I think you have before you as well,</p> <p>6 side by side with it, in the parenthetical</p> <p>7 underneath the, "Amendment of Declarations</p> <p>8 Items 4 & 5," it says, "(Manufacturers &</p> <p>9 Contractors Liab. Policy)," which I'll take</p> <p>10 to be manufacturers and contractors liability</p> <p>11 policy?</p> <p>12 MR. BRENNAN: Hold on. I just</p> <p>13 didn't want to interrupt you. That's why I</p> <p>14 was holding my hand up.</p> <p>15 The previous question, you indicated</p> <p>16 that with respect to the numbering, you'll</p> <p>17 take the CGL to mean comprehensive general</p> <p>18 liability. I'm going to object to that</p> <p>19 portion of the question to the extent that</p> <p>20 there is no evidence that that's what those</p> <p>21 letters, in fact, stand for.</p> <p>22 MR. KOTULA: No, it says,</p> <p>23 "Comprehensive and Liab." I'm taking that as</p> <p>24 an abbreviation for general and an</p> <p>25</p>	<p>1 doesn't mean that it absolutely did not have</p> <p>2 products-completed operations coverage because</p> <p>3 it was -- it was very easy to add that by</p> <p>4 endorsement as exemplified by the page out of</p> <p>5 the other Utica mutual policy which has been</p> <p>6 described as Exhibit-6.</p> <p>7 MR. BRENNAN: And just, I want to</p> <p>8 be clear that I want a continuing objection</p> <p>9 to any questions that are asked about this</p> <p>10 particular exhibit, for example, because I do</p> <p>11 not believe -- this is one of the pages,</p> <p>12 that as I look at it, I do not believe was</p> <p>13 produced. Obviously, I can't say that to a</p> <p>14 hundred percent certainty as we sit right</p> <p>15 here now, but I do not believe I have ever</p> <p>16 seen this page before.</p> <p>17 MR. KOTULA: That's fine. I'm</p> <p>18 through with my questioning of that, in any</p> <p>19 event, so --</p> <p>20 MR. BRENNAN: Just make sure --</p> <p>21 MR. KOTULA: -- that's fine.</p> <p>22 MR. BRENNAN: -- the record is clear</p> <p>23 that this was a continuing objection to all</p> <p>24 questions based upon this specific document</p> <p>25</p>

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<p style="text-align: right;">Page 109</p> <p>1 that is -- that we are particularly referring</p> <p>2 to Exhibit-6.</p> <p>3 MR. KOTULA: You've got that.</p> <p>4 MR. BRENNAN: Thank you.</p> <p>5 BY-MR.KOTULA:</p> <p>6 Q. So, again, looking at Exhibit-5,</p> <p>7 products coverage could have been added, but</p> <p>8 you have no evidence it was?</p> <p>9 A. I have no physical evidence that it</p> <p>10 was, no.</p> <p>11 Q. All right. So you referred to</p> <p>12 broker correspondence, and I want to take a</p> <p>13 look at that with you.</p> <p>14 (Whereupon, Exhibit Number-7 marked.)</p> <p>15 BY-MR.KOTULA:</p> <p>16 Q. Sir, I've placed before you -- bear</p> <p>17 with me.</p> <p>18 Sir, I placed before you what's been</p> <p>19 marked as Hughes Exhibit-7. Have you ever</p> <p>20 seen Exhibit-7 before?</p> <p>21 A. I have.</p> <p>22 Q. For the record, Hughes Exhibit-7 is</p> <p>23 a one-page letter dated November 16, 1977, on</p> <p>24 letterhead from Nicoll, N-i-c-o-l-l, &</p> <p>25</p>	<p style="text-align: right;">Page 111</p> <p>1</p> <p>2 Q. Was there something else that you</p> <p>3 were referring to?</p> <p>4 A. When you say I was referring to it,</p> <p>5 are you talking about it in my report?</p> <p>6 Q. In your report and in your testimony</p> <p>7 today you made reference to broker letters.</p> <p>8 A. I believe those are the two letters</p> <p>9 that I referenced in my report, yes.</p> <p>10 Q. Okay. So let me just ask you about</p> <p>11 these two letters, Exhibits-7 and 8.</p> <p>12 A. Okay.</p> <p>13 Q. Do these letters provide any policy</p> <p>14 numbers or policy prefixes for the alleged</p> <p>15 Jamestown Mutual or Unigard policies issued</p> <p>16 to Troy Belting?</p> <p>17 A. No, they don't.</p> <p>18 Q. Did they provide any specific policy</p> <p>19 periods?</p> <p>20 A. No, they didn't provide any specific</p> <p>21 policy periods, if by that question you mean</p> <p>22 a designation of when a policy begins and</p> <p>23 when it ends.</p> <p>24 Q. Yes.</p> <p>25 A. They did talk about a period of</p>
<p style="text-align: right;">Page 110</p> <p>1 MacChesney, M-a-c-C-h-e-s-n-e-y, Inc., to Mr.</p> <p>2 Allen Decker at Troy Belting. Do you see</p> <p>3 that?</p> <p>4 A. I do.</p> <p>5 Q. All right. Is this one of the</p> <p>6 broker letters you were referring to?</p> <p>7 A. It is. It's, I think, the first</p> <p>8 one.</p> <p>9 MR. KOTULA: Mark that as 8, please.</p> <p>10 (Whereupon, Exhibit Number-8 marked.)</p> <p>11 BY-MR.KOTULA:</p> <p>12 Q. Sir, I placed before you what the</p> <p>13 court reporter has kindly marked as Hughes</p> <p>14 Exhibit-8.</p> <p>15 For the record, that's also on</p> <p>16 Nicoll & MacChesney, Inc., letterhead, a</p> <p>17 letter -- one-page letter from Edward Nicoll</p> <p>18 to Mr. Allen Decker at Troy Belting dated</p> <p>19 December 15, 1978.</p> <p>20 Have you seen this document before?</p> <p>21 A. I have.</p> <p>22 Q. Is this what you were referring to</p> <p>23 as the broker correspondence?</p> <p>24 A. This is part of it, sure.</p> <p>25</p>	<p style="text-align: right;">Page 112</p> <p>1 during which they believe there was coverage</p> <p>2 provided.</p> <p>3 Q. A period of 25 years, roughly?</p> <p>4 A. Well, the first one was ten years.</p> <p>5 Q. Right.</p> <p>6 A. And which apparently was incorrect.</p> <p>7 Q. The second one goes to 25, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. All right. But they don't provide</p> <p>10 any specific policy periods, like, annual</p> <p>11 periods with specific dates, correct?</p> <p>12 A. No, they do not.</p> <p>13 Q. Do they provide any policy limits?</p> <p>14 A. No, they don't.</p> <p>15 Q. Do they tell us what type of policy</p> <p>16 -- what type of liability policy was issued?</p> <p>17 A. No.</p> <p>18 Q. So we can't tell from these letters</p> <p>19 whether it's CGL or M&C policies, correct?</p> <p>20 MR. BRENNAN: Object to the form.</p> <p>21 A. I don't recall. Do we have the</p> <p>22 letters to which they are responding? Like,</p> <p>23 for instance, the '77 letter says to Mr.</p> <p>24 Decker, "Dear Allen, with reference to your</p> <p>25</p>

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<p>1 letter of November 16th," I think we do have</p> <p>2 that -- that letter. Do you have that?</p> <p>3 And I don't know whether that letter</p> <p>4 referenced anything specific about -- about</p> <p>5 the policies.</p> <p>6 MR. KOTULA: Would you mark this as</p> <p>7 Exhibit-9.</p> <p>8 (Whereupon, Exhibit Number-9 marked.)</p> <p>9 BY-MR.KOTULA:</p> <p>10 Q. We have placed before you what's</p> <p>11 been marked as Hughes Exhibit-9.</p> <p>12 For the record, it appears to be a</p> <p>13 draft or an unsigned letter that isn't on</p> <p>14 letterhead, may be a copy or something as</p> <p>15 business may have been done back then, dated</p> <p>16 November 16, 1977, from Allen Decker at Troy</p> <p>17 Belting to Mr. Edward Nicoll.</p> <p>18 Is this the document you were -- you</p> <p>19 were just discussing?</p> <p>20 A. Right. And since I'm an old archaic</p> <p>21 person, I can tell you that the way business</p> <p>22 was done back then was usually by using</p> <p>23 carbon paper instead of a facsimile copy.</p> <p>24 So this probably was -- the reason there's</p> <p>25</p>	<p>1 Q. You can't tell what type of</p> <p>2 liability policy they're referencing from</p> <p>3 saying "liability policy"?</p> <p>4 A. Just from using the term "liability</p> <p>5 policy"?</p> <p>6 Q. Yeah.</p> <p>7 A. No, you can't.</p> <p>8 Q. And none of these letters, 7 --</p> <p>9 Exhibits-7, 8 or 9 say anything about policy</p> <p>10 limits?</p> <p>11 A. That's right.</p> <p>12 Q. None of them say anything about the</p> <p>13 policy terms?</p> <p>14 A. That's correct.</p> <p>15 Q. As you sit here today, do you know</p> <p>16 if the author of the letter, Mr. Edward</p> <p>17 Nicoll at Nicoll & MacChesney, if he had</p> <p>18 actual policies in front of him when he</p> <p>19 wrote this letter?</p> <p>20 A. I don't know.</p> <p>21 Q. Did the policies even exist when he</p> <p>22 wrote the letter --</p> <p>23 MR. BRENNAN: Object to the form.</p> <p>24 BY-MR.KOTULA:</p> <p>25</p>
Page 114	Page 116
<p>1 no letterhead on it is it was a carbon copy</p> <p>2 that's been copied. But that's neither here</p> <p>3 nor there.</p> <p>4 The fact is that you're correct,</p> <p>5 this does not contain any information about</p> <p>6 policy limits.</p> <p>7 Q. Or the type of liability policy it</p> <p>8 may have been?</p> <p>9 A. Right. It still just talks about</p> <p>10 liability insurance.</p> <p>11 Q. Right.</p> <p>12 A. You know, it doesn't specifically</p> <p>13 say, but the -- the letter itself has to do</p> <p>14 with the question of coverage for a wrongful</p> <p>15 death caused by asbestos poisoning. I've</p> <p>16 never really heard it put that way. But</p> <p>17 that tells you that you're talking about some</p> <p>18 kind of operational liability but not</p> <p>19 specifically what kind of policy.</p> <p>20 Q. Right. You can't tell, correct?</p> <p>21 MR. BRENNAN: Object to the form.</p> <p>22 A. Well, what do you -- I can't tell</p> <p>23 what?</p> <p>24 BY-MR.KOTULA:</p> <p>25</p>	<p>1 Q. -- as a copy of the policy?</p> <p>2 A. I have no idea.</p> <p>3 Q. You don't know if he had an actual</p> <p>4 hard copy of a policy available to him,</p> <p>5 right?</p> <p>6 A. Well, now, when you say available to</p> <p>7 him, I mean, he's the -- he's the broker.</p> <p>8 You would think that he had a hard copy of</p> <p>9 the policy available to him. Or probably</p> <p>10 more likely what he would have is a broker's</p> <p>11 or agent's daily copy, which would be usually</p> <p>12 everything except the jacket of the policy.</p> <p>13 But we don't know for sure that he had --</p> <p>14 that he had that.</p> <p>15 Q. That thing has never been found,</p> <p>16 right, that type of document?</p> <p>17 A. No. But what you asked was did he</p> <p>18 have it when he wrote the pol -- wrote the</p> <p>19 letter.</p> <p>20 Q. And you don't know?</p> <p>21 A. I don't know.</p> <p>22 Q. Right. You can't say one way or</p> <p>23 another whether he had it?</p> <p>24 A. No.</p> <p>25</p>



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1
2 Q. And it's clear he doesn't reference
3 anything that you could only get from looking
4 at the face of a policy, like, policy
5 number, policy term, policy limits, right?
6 MR. BRENNAN: Object to the form.
7 A. Well, he does give a specific date
8 beginning of July the 18th, 1949, and he
9 does give a specific ending date of October
10 3rd, 1974, which would be specific beginning
11 and ending dates of at least two policies.
12 BY-MR.KOTULA:
13 Q. And the October date from 1974,
14 that's the inception date of an INA policy
15 or a Pacific Employers --
16 A. That's right.
17 Q. -- Insurance Company policy, right?
18 A. That's correct.
19 Q. Other than that, he doesn't provide
20 the type of information I just asked about,
21 right?
22 MR. BRENNAN: Object to form.
23 A. The type of information you asked
24 about, it being the terms and conditions of
25 the policy and the policy limits, et cetera?

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1
2 BY-MR.KOTULA:
3 Q. Policy number, policy period, the
4 actual policy term.
5 A. Well, you -- you, again, use the
6 term "policy period." He talks about the
7 beginning, which was July 18th, 1949, and
8 ending, which was October 3rd, 1974.
9 Q. That's it?
10 A. Those are bits and pieces of a
11 policy period. Other than that, no, that's
12 right.
13 Q. Right. And we don't know where he
14 got those dates from, right?
15 A. No, we don't.
16 Q. And we don't have any document that
17 contains those dates other than the Pacific
18 Employers policy with an inception date of
19 October 3, 1974?
20 A. I believe that's correct.
21 Q. Mr. Hughes, your expert report and
22 your opinions rely on specimen form CGL
23 policy documents to opine about the terms of
24 the alleged missing policies for the 1949 to
25 1974 gap period, right?

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1
2 A. Right.
3 Q. And these specimen forms, they don't
4 come from Jamestown Mutual or Unigard, do
5 they?
6 A. No, they don't.
7 Q. If we assume that the alleged
8 missing policies for the 1949 to 1974 period
9 were M&C policies, are the CGL specimen forms
10 relevant?
11 MR. BRENNAN: Object to the form.
12 A. Probably not.
13 BY-MR.KOTULA:
14 Q. Thank you.
15 Do they tell us what the terms of
16 the missing M&C policies were?
17 A. Well, to a person that's used to
18 working in insurance and works with both
19 sides of policies all the time, yes. To
20 someone generally, no.
21 Q. The specimen form of a CGL specimen
22 tells us what the terms of the M&C policies
23 that are missing?
24 A. If the specimen CGL policy contains
25 premises and operations, et cetera, et

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1
2 cetera, you could say -- because the CGL
3 policy was designed to produce exactly the
4 same coverages that a person could construct
5 by adding the -- the monoline policies
6 together, so you could say that the CGL
7 policy would show you what the particular M&C
8 section would provide. But other than that,
9 I mean, you couldn't -- I wouldn't use it to
10 say this tells us what the coverage was.
11 Q. Right. That was my question.
12 And even if we assume that those CGL
13 specimen forms that you attached in your
14 report were used and included in an alleged
15 policy issued by Jamestown Mutual or Unigard
16 during that time frame, do those specimen
17 forms constitute complete copies of a policy?
18 MR. BRENNAN: Object to the form.
19 A. They -- they constitute complete
20 copies of -- of the particular specimen
21 policy. Now, the policy could be endorsed
22 to make certain changes to it. However, we
23 need to keep in mind that this was New York,
24 and New York was the strictest state in
25 terms of requiring that the members of the



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<p style="text-align: right;">Page 121</p> <p>1</p> <p>2 bureaus issue policies that were filed by</p> <p>3 those bureaus in that -- in the state of New</p> <p>4 York.</p> <p>5 So when we look at a policy that we</p> <p>6 know that Jamestown issued a specific type of</p> <p>7 policy, then we can make reference to the</p> <p>8 form that was filed generically in that state</p> <p>9 to know what policy that it was -- policy</p> <p>10 form it was that they issued.</p> <p>11 (Whereupon, Exhibit Number-10 marked.)</p> <p>12 BY-MR.KOTULA:</p> <p>13 Q. Sir, I am showing you now what the</p> <p>14 court reporter has kindly marked as Hughes</p> <p>15 Exhibit-10.</p> <p>16 And I'll state for the record that</p> <p>17 Hughes Exhibit-10 is portions of your oral</p> <p>18 deposition given in the Trelleborg,</p> <p>19 T-r-e-l-l-e-b-o-r-g, Automotive USA, Inc., vs.</p> <p>20 Travelers Casualty & Surety Company of</p> <p>21 America case in the Eastern District of</p> <p>22 Michigan federal court.</p> <p>23 Do you recall testifying as an</p> <p>24 expert and providing an expert report in</p> <p>25 Trelleborg?</p>	<p style="text-align: right;">Page 123</p> <p>1</p> <p>2 and included in an alleged policy issued by</p> <p>3 Aetna to Yale during that time period, does</p> <p>4 that policy specimen form constitute a</p> <p>5 complete copy of a policy?"</p> <p>6 Answer, "No. You would have to have</p> <p>7 the declarations page and any endorsements."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. That was your testimony in that</p> <p>11 case, right?</p> <p>12 A. Yes, that's right.</p> <p>13 Q. So in order to constitute a complete</p> <p>14 copy of a policy, a specimen form isn't</p> <p>15 enough. You would have to have the</p> <p>16 declarations page and any endorsements,</p> <p>17 correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Are you aware of any lists of</p> <p>20 endorsements that were used in any alleged</p> <p>21 missing policy for the 1949 to 1974 gap</p> <p>22 period?</p> <p>23 A. No, I'm not.</p> <p>24 Q. So -- and just so we're talking</p> <p>25 about the same thing, do -- if you have an</p>
<p style="text-align: right;">Page 122</p> <p>1</p> <p>2 A. I do.</p> <p>3 Q. And I'm going to refer you to page</p> <p>4 87.</p> <p>5 By the way, Exhibit-10 is portions,</p> <p>6 as I said, of your deposition. So it starts</p> <p>7 with page 1, which is the cover page of the</p> <p>8 transcript, and then it contains pages 64</p> <p>9 through 66 and 86 through 88 and then 152</p> <p>10 through 156.</p> <p>11 And if you look at page 87, you</p> <p>12 were asked at line 9, question, "You don't</p> <p>13 know if, for example, Aetna used any sort of</p> <p>14 manuscript policy forms or manuscript</p> <p>15 endorsements as part of any policy allegedly</p> <p>16 issued to Yale in that time period, correct?"</p> <p>17 Answer, "I do not."</p> <p>18 That was your testimony in that</p> <p>19 case, right?</p> <p>20 A. Right.</p> <p>21 Q. And then you were asked at line 14,</p> <p>22 "And then even if we assume for the sake of</p> <p>23 argument that those specimen -- policy</p> <p>24 specimen forms which are attached as</p> <p>25 Exhibit-C to your expert report, were used</p>	<p style="text-align: right;">Page 124</p> <p>1</p> <p>2 actual policy, whether it's a primary or an</p> <p>3 umbrella -- well, let's deal with just the</p> <p>4 primary. Does the primary policy almost</p> <p>5 always, if not always, contain an -- an</p> <p>6 endorsement list?</p> <p>7 MR. BRENNAN: Object to the form.</p> <p>8 A. I would say the majority of the</p> <p>9 times it would, yes.</p> <p>10 BY-MR.KOTULA:</p> <p>11 Q. And policies -- policy endorsements,</p> <p>12 they're often form endorsements and they have</p> <p>13 form numbers, correct?</p> <p>14 A. Correct.</p> <p>15 Q. So they have unique identifiers in</p> <p>16 many cases that the company knows what it's</p> <p>17 referencing by putting that endorsement number</p> <p>18 in the list of endorsements. Is that true?</p> <p>19 A. Well, not only the company, but</p> <p>20 especially if you're talking about a policy</p> <p>21 that was issued in, like, the state of New</p> <p>22 York, everybody who reads that would know</p> <p>23 what those endorsements were.</p> <p>24 Q. Right. So if you -- if you had a</p> <p>25 policy list and a decla -- you know, an</p>



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<p style="text-align: right;">Page 125</p> <p>1 2 endorsement list and a declaration page and 3 you knew what form was used, you could go 4 find all the different endorsements and 5 assemble the -- the complete policy, unless 6 there were some other change endorsements 7 added that you didn't get, right? 8 A. You could -- you could assemble what 9 I would consider to be a complete policy. 10 As to whether what that -- whether the 11 insurance company would consider that to be a 12 complete policy is -- is questionable. But 13 did you include the declarations page? 14 Q. Yes, I did. 15 A. Okay. Yes, you -- and what about 16 policy jacket and the -- 17 Q. Yeah, I said the -- the form, the 18 coverage form and then the endorsement list 19 with the declarations page. 20 A. Okay. We -- it's easy to get 21 caught up in the semantics, but I -- I don't 22 use the term "form" to describe what you're 23 talking about. I talk about it as the 24 "wordings," because when you're talking about 25 forms, you're talking about something</p>	<p style="text-align: right;">Page 127</p> <p>1 2 not any endorsements on it that limited 3 coverage, that's another -- that's another 4 story entirely. 5 Q. Right. So in the example you've 6 already testified about today, if there's an 7 M&C policy and it doesn't have -- you 8 started with the premise it doesn't have an 9 endorsement adding back product liability or 10 product hazard coverage, then the policyholder 11 or the -- the party claiming coverage would 12 have the burden of showing there was this 13 grant of -- additional grant of coverage for 14 product liability or product hazard coverage? 15 A. That's right. 16 MR. KOTULA: It's 12:55. I think 17 now would be a good place to break for 18 lunch. 19 (Whereupon, break taken, 12:55 p.m. 20 to 1:34 p.m.) 21 (Whereupon, Exhibit Number-11 marked.) 22 BY-MR.KOTULA: 23 Q. Mr. Hughes, insured's typically 24 increase their liability limits over time 25 rather than decrease them, correct?</p>
<p style="text-align: right;">Page 126</p> <p>1 2 completely different. But I think we're on 3 the same page. 4 I'm just saying that if you have the 5 policy wordings, which would be the jacket 6 and the -- and the coverage grants, and the 7 declarations page and a list of all the 8 endorsements, if you were in a state like 9 New York, yes, you could reconstruct the 10 policy exactly. 11 Q. Right. But you don't have any -- 12 you're not aware of any endorsement list for 13 this gap period from 1949 to 1974 for any 14 policy? 15 A. No, I'm not. And, of course, the 16 question always arises as to whether this 17 issue about endorsements falls within the 18 burden of proof of the policyholder. If 19 you're talking about a policyholder who is 20 claiming additional coverages beyond what's 21 provided in the -- in the standard form, 22 yeah, I think the policyholder has the 23 responsibility to provide that. If on the 24 other hand you're talking about the 25 policyholder having to prove that there were</p>	<p style="text-align: right;">Page 128</p> <p>1 2 A. Yes. With one exception. During 3 the period of when umbrellas were first 4 becoming to be introduced, insured's found 5 that they could decrease their primary 6 liability coverage and add an umbrella policy 7 on top of it, and so, as in this case, that 8 often happened. But other than that -- and 9 if you considered the totality of the 10 coverage that would result from that, they'd 11 probably increase their coverage by adding an 12 umbrella. So the answer to your question is 13 yes. 14 Q. Right. I mean, I could mark your 15 expert report from the Trelleborg case where 16 you said something similar. I'm just going 17 to repeat it, and you can tell me if you 18 agree with it. If Tim says: No, hey, give 19 me it, I want it -- 20 But in Trelleborg, on page 4 of your 21 expert report, you said, "After having 22 examined hundreds of insurance programs 23 similar to that of Yale, I know that, except 24 in cases where the insured purchased umbrella 25 coverage that permitted underlying limits</p>



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<p style="text-align: right;">Page 129</p> <p>1 lower than those being purchased at the time, 2 insured's typically increased their liability 3 limits over time rather than decreasing 4 them." And then you say, "In this case, we 5 know that the insured bought 100,000 6 accident/occurrence PD limits in the 1960s 7 and also in the 1970s after they purchased 8 an umbrella policy." 9 10 A. Isn't that what I just said? 11 Q. Yeah, I think so. I think you're 12 agreeing with it, correct? 13 A. I believe that's true. 14 MR. BRENNAN: One second. You don't 15 have to mark it. Can I have a copy, just 16 since we read from it? Thank you. 17 MR. KOTULA: I don't have a problem 18 with that. 19 BY-MR.KOTULA: 20 Q. Now, if you can pull out Exhibit-1, 21 which is your expert report. It's the one 22 with the big binder clip. Probably right 23 there. And we're through with the other 24 exhibits for now, so you can slide those off 25 if you -- if it's easier for you.</p>	<p style="text-align: right;">Page 131</p> <p>1 I've said. 2 3 Q. Right. So it could be the case 4 that for the one year prior to October 3, 5 1974, Troy Belting had \$500,000 in limits? 6 A. It's possible. 7 Q. And before that, they may have had 8 less? 9 A. It's possible. 10 Q. And the only basis for saying that 11 the policy prior to October 3, 1974, had 12 500,000 in limits is a reference in Troy 13 Belting's board of directors' minutes, 14 correct? Single reference. 15 A. Where they said that at the time of 16 the particular claim that they were talking 17 about, they only had limits of 500,000, and 18 so they recommended an increase in limits? 19 Is that the directors' minutes you're talking 20 about? 21 Q. Yes, sir. 22 A. That's correct. 23 Q. And that was an accident that 24 happened in May of 1974, was it not? 25 A. That's correct.</p>
<p style="text-align: right;">Page 130</p> <p>1 2 Now, I'm going to refer you, for 3 purposes of this questioning, to page 4 of 4 your expert report in this case, which has 5 been marked as Hughes Exhibit-1. 6 A. Okay. 7 Q. Now, you've opined that as to the 8 allegedly missing policies for the 1949 to 9 1974 gap period, that there's no evidence 10 that they had limits less than 500,000 each 11 year -- 12 A. Right. 13 Q. -- right? 14 Let me ask you what evidence there 15 is that the allegedly missing policies for 16 that 1949 to 1974 gap period had limits the 17 entire period of 500,000. You're not really 18 saying that, are you? 19 A. No. I'm saying that we know that 20 prior to October 1974, for some period of 21 time, they purchased \$500,000 in limits. We 22 don't have any evidence that there was any 23 period of time that they purchased less than 24 that. So we don't know when that \$500,000 25 arrived. And, I mean, that's basically all</p>	<p style="text-align: right;">Page 132</p> <p>1 2 Q. So the only reference that exists to 3 what the limits may have been for that gap 4 period relate to a single policy period prior 5 to October 3, 1974, and it -- and it's 6 solely the -- the board of director minutes 7 for one date that say that, right? 8 MR. BRENNAN: Object to the form. 9 A. I believe that's correct. 10 BY-MR.KOTULA: 11 Q. Okay. I am going to show you now 12 what the court reporter has marked Hughes 13 Exhibit-11. 14 For the record, Hughes Exhibit-11 is 15 a one-page document. It's a letter from 16 Arnold Jordan, vice president of Troy 17 Belting, to Mr. John Prestage, 18 P-r-e-s-t-a-g-e, at The Hartford, dated June 19 25, 2001. 20 Have you ever seen this document 21 before, sir? 22 A. I think so, yes. Excuse me. 23 Q. And Mr. Jordan is providing 24 information to Mr. Prestage at Hartford in 25 response to a request, correct?</p>



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<p>1 2 A. That's what it says, "In response to 3 your request." 4 Q. And this is now as of June 2001, 5 Mr. Jordan says, and I'll quote, "Troy 6 Belting & Supply Company does not retain 7 insurance policies beyond the years that they 8 are in force." 9 Do you see that? 10 A. I do. 11 Q. And do you believe that information 12 to have been correct? 13 A. I have no reason to believe that 14 it's not correct. 15 Q. He then says, "I have attempted to 16 provide you with what information I can. 17 The following were carriers as best I can 18 determine." And then he starts in the 19 1960s. He has no information prior to the 20 1960s, correct? 21 A. I presume so. I mean, I don't know 22 whether he had any information or not. He 23 -- he starts in the 1960s. 24 Q. Right. And for the 1960s, he 25 identifies one company, Firemen's Mutual</p>	<p>1 2 Employers was an insurer in the 1970s at 3 Troy Belting, correct? 4 A. Yes, we do. 5 Q. And that's now part of the ACE group 6 of companies, is it not? 7 A. I believe that's correct. 8 Q. And INA is also part of the ACE 9 group of companies, correct? 10 A. That's right, yes. 11 MR. FOX: Objection to form. 12 BY-MR.KOTULA: 13 Q. And then it says 1980s, 1990s, The 14 Hartford; 1990s, Great American; 1990s, 15 Selective Insurance; 2000, Selective Insurance, 16 right? 17 A. It's what it says. 18 Q. Do you have any reason to doubt the 19 information that's set forth there? 20 A. I don't have any reason to doubt it. 21 I don't -- I just -- I don't -- none of it 22 makes a lot of sense to me. I don't -- I 23 don't know where he got his information or 24 what it means, particularly. 25 Q. You discuss a concept in your report</p>
Page 134	Page 136
<p>1 2 (UAC), correct? 3 A. Right. 4 Q. Doesn't -- doesn't identify Jamestown 5 Mutual Insurance Company or Unigard Insurance 6 Company, does he? 7 A. Does not. 8 Q. And then 1970s, he says Unigard 9 Insurance Group, correct? 10 A. Correct. 11 Q. And then 1970s, he says ACE USA? 12 A. Right. 13 Q. 1980s, he says INA (Cigna)? 14 A. Right. 15 Q. Now, we know today, and perhaps in 16 2001, ACE and INA and Cigna were related 17 companies, correct? 18 MR. FOX: Objection to form. 19 A. We know -- we know that -- I think 20 we know that today. I don't -- I don't 21 know when those relationships arose without 22 checking. I'd have to look it up. I can't 23 remember all that stuff. 24 BY-MR.KOTULA: 25 Q. Right. Well, we know that Pacific</p>	<p>1 2 having to do with Occam's Razor? 3 A. Right. 4 Q. Can you tell us what Occam's Razor 5 is? 6 A. As simply as I -- as I can, it's a 7 -- it's a logic theorem that says when one 8 is presented with a situation that presents 9 the possibility of a varied number of 10 resolutions, that the simplest solution is 11 probably the correct solution. 12 Q. Right. And you discuss it in your 13 report, which is Hughes Exhibit-1, in 14 connection with the statement about the 15 broker letters, which we marked as Exhibits-7 16 and 8, correct? 17 A. Correct. 18 Q. And you assume the information, such 19 as it is that's in those exhibits, is 20 correct based on Occam's Razor? 21 A. Well, it's only -- it's not correct 22 in one of them. It is correct in another 23 one. But the idea being that if -- Occam's 24 Razor, if you -- if you have a situation 25 where you have, say, three possible answers,</p>



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<p style="text-align: right;">Page 137</p> <p>1 one answer requires very little manipulation</p> <p>2 to the facts, the second answer requires</p> <p>3 tremendous manipulation to the facts, and the</p> <p>4 third answer requires you to make complete</p> <p>5 assumptions about situations that probably</p> <p>6 couldn't exist, which one is the best? It's</p> <p>7 the simplest one that's the best answer.</p> <p>8 And that's all it is.</p> <p>9</p> <p>10 Q. Now, with Occam's Razor, you assume</p> <p>11 that the information in Exhibit-8, which was</p> <p>12 the second broker letter, was correct because</p> <p>13 that's the simplest explanation?</p> <p>14 A. Well, also because it -- it</p> <p>15 comported with pretty much what the rest of</p> <p>16 the information that we had indicated.</p> <p>17 Q. But I'm just focusing on Occam's</p> <p>18 Razor now. You used Occam's Razor to say</p> <p>19 that the simplest explanation is that he was</p> <p>20 using correct information when he wrote that</p> <p>21 letter.</p> <p>22 A. The simplest explanation is that he</p> <p>23 -- yes, that's right.</p> <p>24 Q. And is there any reason to believe</p> <p>25 that Occam's Razor wouldn't tell you that the</p>	<p style="text-align: right;">Page 139</p> <p>1 time either.</p> <p>2 MR. KOTULA: I spelled it.</p> <p>3 MR. BRENNAN: I didn't get it the</p> <p>4 first time either. You're a tricky one.</p> <p>5 A. I've got you, yes, indeed.</p> <p>6 BY-MR.KOTULA:</p> <p>7 Q. I didn't think that was like saying</p> <p>8 "two yutes," My Cousin Vinny.</p> <p>9 A. Of course, it's possible -- no,</p> <p>10 never mind.</p> <p>11 Q. So it doesn't give us policy</p> <p>12 periods?</p> <p>13 A. No, it doesn't.</p> <p>14 Q. Doesn't give us any policy numbers?</p> <p>15 A. It does not.</p> <p>16 Q. Doesn't give us any policy limits?</p> <p>17 A. It does not.</p> <p>18 MR. KOTULA: Let me mark this as</p> <p>19 12.</p> <p>20 (Whereupon, Exhibit Number-12 marked.)</p> <p>21 BY-MR.KOTULA:</p> <p>22 Q. I am just going to state for the</p> <p>23 record that Hughes Exhibit-11 is a -- for</p> <p>24 want of a better word, something you've</p> <p>25</p>
<p style="text-align: right;">Page 138</p> <p>1 information in Exhibit-11 is -- is correct?</p> <p>2 A. Well, no, there's -- there's not.</p> <p>3 But -- no, there's not.</p> <p>4 Q. Now, does Exhibit-11 identify the</p> <p>5 type of insurance policy; in other words, the</p> <p>6 type of coverage that these policies or that</p> <p>7 these companies issued to Troy Belting?</p> <p>8 A. It does not.</p> <p>9 Q. So like the other ones, it doesn't</p> <p>10 tell us what type of coverage the policies</p> <p>11 contain?</p> <p>12 A. It doesn't, no.</p> <p>13 Q. And it doesn't tell us anything</p> <p>14 about actual policy periods, does it?</p> <p>15 A. It does not.</p> <p>16 Q. Just sort of tells us eras?</p> <p>17 A. Tells us what?</p> <p>18 Q. Eras, e-r-a-s. The estimated time,</p> <p>19 some sort of period of time. 1960s, 1970s,</p> <p>20 that's an era.</p> <p>21 A. Oh, eras. I thought you were saying</p> <p>22 "errors" or "arrows." I'm not sure.</p> <p>23 Q. I said e-r-a-s.</p> <p>24 MR. FOX: I didn't get it the first</p> <p>25</p>	<p style="text-align: right;">Page 140</p> <p>1 described as ledger entries --</p> <p>2 A. 12.</p> <p>3 Q. Oh, I'm sorry.</p> <p>4 MR. BRENNAN: Exhibit-12. You were</p> <p>5 referring to the wrong exhibit. That's what</p> <p>6 he's correcting.</p> <p>7 MR. KOTULA: Thank you. My bad.</p> <p>8 BY-MR.KOTULA:</p> <p>9 Q. Hughes Exhibit-12, you've referred to</p> <p>10 for want of a better word as Troy Belting</p> <p>11 ledger entries; is that right?</p> <p>12 A. That's right.</p> <p>13 Q. And it has sort of a numbering</p> <p>14 system. It's somewhat hard to describe, but</p> <p>15 it appears to be in the upper right-hand</p> <p>16 corner, if you look at, say, the last page</p> <p>17 of the document, it says page 114 of 114,</p> <p>18 and if you flip backwards, it takes you to</p> <p>19 page 59. Starts at page 59. You can't</p> <p>20 really read 59. You can't really read 60.</p> <p>21 But if you go to the third page of the</p> <p>22 exhibit, it says page 61 of 114 and so on.</p> <p>23 A. You're talking about the typed</p> <p>24 numbers and not the page numbers that are in</p> <p>25</p>



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<p style="text-align: right;">Page 141</p> <p>1</p> <p>2 bold?</p> <p>3 Q. In the actual ledger. Yeah, because</p> <p>4 I think --</p> <p>5 A. Okay.</p> <p>6 Q. -- the first page has a -- has a</p> <p>7 big bold 42 in the upper left-hand corner,</p> <p>8 and the last page has -- has a number that</p> <p>9 it's cut off somewhat, but it looks like a</p> <p>10 big, bold number 235 in the upper right-hand</p> <p>11 corner.</p> <p>12 A. Yeah. Just so you'll know, those</p> <p>13 numbers that you see were probably preprinted</p> <p>14 on the blank pages of this -- this was a</p> <p>15 ledger book. Seen hundreds of them. And so</p> <p>16 that's probably -- it has nothing to do with</p> <p>17 what we're talking about.</p> <p>18 All right. Which page do you want</p> <p>19 me to look at?</p> <p>20 Q. I'm just asking you, have you seen</p> <p>21 this document before that's marked as</p> <p>22 Exhibit-12?</p> <p>23 A. Yes, I have.</p> <p>24 Q. And you -- you rely on it to some</p> <p>25 extent, correct?</p>	<p style="text-align: right;">Page 143</p> <p>1</p> <p>2 A. I agree.</p> <p>3 Q. And page 104 pertains to 1967?</p> <p>4 A. That's right.</p> <p>5 Q. Now, Jamestown Mutual does not appear</p> <p>6 to be listed on any of these two insurance</p> <p>7 pages; is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. Now, page 59 lists entries, like,</p> <p>10 Metropolitan from 1952 to 1955, right?</p> <p>11 A. Yes.</p> <p>12 Q. And page 104 lists entries, like,</p> <p>13 Metropolitan, New England and so on, right?</p> <p>14 A. Yes.</p> <p>15 Q. Now, if you go to page 62 of</p> <p>16 Exhibit-12, there's a reference -- and this</p> <p>17 is the page titled "Expenses," correct?</p> <p>18 A. Correct.</p> <p>19 Q. Or "Expense." I'm sorry. Page 62</p> <p>20 of 114 of Exhibit-12.</p> <p>21 A. Right.</p> <p>22 Q. It says "Expense." And the letters</p> <p>23 I-n-s is listed for the years 1952 through</p> <p>24 -- let's see. Is listed under May and July.</p> <p>25 Do you see that? No, I'm sorry. Strike</p>
<p style="text-align: right;">Page 142</p> <p>1</p> <p>2 A. To a certain extent, yes.</p> <p>3 Q. There are different headings on some</p> <p>4 of these pages. Like, the first page of</p> <p>5 Exhibit-12 in cursive writing or script is</p> <p>6 the word "Insurance," correct?</p> <p>7 A. Correct.</p> <p>8 Q. And the next one says, "New York</p> <p>9 State Unemployment Insurance Tax."</p> <p>10 A. Right.</p> <p>11 Q. The next one says "Expense"?</p> <p>12 A. Right.</p> <p>13 Q. And so on, right?</p> <p>14 A. Right.</p> <p>15 Q. Two sheets have "Insurance" listed at</p> <p>16 the top. The one that's the first page,</p> <p>17 which I'll refer to as page 59 of 114, and</p> <p>18 page 104.</p> <p>19 A. Okay.</p> <p>20 Q. Do we agree?</p> <p>21 A. I agree.</p> <p>22 Q. Page 59 lists entries for the years</p> <p>23 1952, 1953, 1954 and 1955.</p> <p>24 A. Correct.</p> <p>25 Q. Do you agree?</p>	<p style="text-align: right;">Page 144</p> <p>1</p> <p>2 that.</p> <p>3 Page 62, Jamestown M-u-t is listed</p> <p>4 under May and July, separate and apart from</p> <p>5 I-n-s. Do you see that?</p> <p>6 A. I see that.</p> <p>7 Q. There's also an entry for 1955 to</p> <p>8 "Edw J. Nicoll Ins," correct?</p> <p>9 A. I know that's true, but I can't find</p> <p>10 it right now. It's where -- in May?</p> <p>11 Q. 1955.</p> <p>12 A. In May, did you say?</p> <p>13 Q. I didn't -- I didn't say. I just</p> <p>14 said it was -- there's an entry for --</p> <p>15 A. I see it. It's that second line</p> <p>16 there. April?</p> <p>17 Q. And then Jamestown also appears with</p> <p>18 "Edw J. Nicoll Ins" in 1962 to 1964 and</p> <p>19 1965, and that's on pages 80 and 81 and 82</p> <p>20 of Exhibit-12.</p> <p>21 A. Yes.</p> <p>22 Q. Now, do any of these entries provide</p> <p>23 any policy numbers?</p> <p>24 A. They do not.</p> <p>25 Q. Do they provide the policy prefixes?</p>



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<p>1 2 A. They do not. 3 Q. Do they provide specific policy 4 periods? 5 A. No. 6 Q. Do they say what type of coverage? 7 A. No. 8 Q. Do they provide any policy limits? 9 A. No. 10 Q. And do they specify whether the 11 policy is workers' comp, automobile liability, 12 CGL or M&C? 13 A. No, they don't. 14 Q. We're done with that. 15 I want to -- sir, would you hand me 16 that exhibit? I'd like to put that on it 17 instead of that. 18 A. If you'll hand me the clip, I'll put 19 it on. No extra charge. 20 Q. Thank you. 21 Sir, you also refer to in your 22 report, which is Hughes Exhibit-1, to certain 23 expense account documents from Troy Belting. 24 Do you recall that? 25 A. Yes.</p>	<p>1 2 A. Yes, I did. 3 Q. And there is a reference under 4 "Credit," "E.J. Nicoll & Son, Jamestown 5 Mutual Insurance." 6 Do you see that? 7 A. Yes. 8 Q. And then it says \$103.55? 9 A. I see it. 10 Q. Then if you go to the 1960 memo 11 that's part of this exhibit, also under 12 "Credit," there's a reference to E.J. Nicoll 13 & Son, Jamestown Mutual Insurance. 14 A. Yes. 15 Q. And there's a credit of \$232.56, 16 correct? 17 A. Yes. 18 Q. If you go to 1963, the same thing, 19 there's a credit next to Edw. J. Nicoll & 20 Son, Jamestown Insurance, and this is 21 \$486.74, right? 22 A. Right. 23 Q. And then the last one, under 24 "Credit," it says, "Jamestown and AMICA," 25 A-M-I-C-A, "refund" and "insurance," \$96.63,</p>
Page 146	Page 148
<p>1 2 MR. KOTULA: Would you mark that as 3 Exhibit-13. 4 (Whereupon, Exhibit Number-13 marked.) 5 BY-MR.KOTULA: 6 Q. Sir, we've placed before you what 7 the court reporter has kindly marked as 8 Hughes Exhibit-13. 9 And for the record, it is a 10 multi-page document with -- bear with me -- 11 it's two-page memos, if you will, for 1959, 12 1960, 1963, and 1964. The first is dated 13 February 19th, 1960; the second February 14 20th, 1961; the third February 26th, 1964; 15 and the fourth, March 1st, 1965. 16 And the first page of Exhibit-13 17 says "1959," and under that, "Troy Belting & 18 Supply Co., Inc., Troy, New York." The 19 second page at the top says, "1959," and 20 then beneath that after the name of the 21 company and the location, it says, "Expense 22 Account." Do you see that? 23 A. Yes. 24 Q. Are you familiar with these 25 documents? Did you review them?</p>	<p>1 2 right? 3 A. Right. 4 Q. Now, do any of these references to 5 Jamestown provide any policy numbers or 6 policy prefixes for the alleged Jamestown 7 Mutual or Unigard policies? 8 A. No, they don't. 9 Q. Do they provide any specific policy 10 periods? 11 A. No, they don't. 12 Q. Do they provide any policy limit 13 information? 14 A. No, they don't. 15 Q. Do they identify the type of policy 16 that may have been issued? 17 A. No, they don't. 18 Q. So it could be workers' comp, could 19 be auto, could be CGL, could be M&C? 20 A. Yes. 21 Q. With workers' compensation insurance, 22 is it common for workers' comp insurers to 23 provide credits at the end of a policy year 24 to the policyholder? 25 A. Well, not unless the policyholder had</p>



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<p style="text-align: right;">Page 149</p> <p>1</p> <p>2 paid a large deposit premium at the beginning</p> <p>3 and then at the end of the policy, the</p> <p>4 premium, the payroll audit resulted in a</p> <p>5 credit. And so in that case, yes, it was</p> <p>6 common for that to occur.</p> <p>7 Q. Okay. We're done with that.</p> <p>8 MR. KOTULA: Would you mark that as</p> <p>9 14, please.</p> <p>10 (Whereupon, Exhibit Number-14 marked.)</p> <p>11 BY-MR. KOTULA:</p> <p>12 Q. Sir, we are showing you now what's</p> <p>13 been marked as Hughes Exhibit-14.</p> <p>14 For the record, Hughes Exhibit-14 is</p> <p>15 a response by the State of New York Workers'</p> <p>16 Compensation Board in Albany, New York, dated</p> <p>17 August 25, 2009 to Mr. David Barcomb,</p> <p>18 B-a-r-c-o-m-b, general manager of Troy Belting</p> <p>19 & Supply Company. And it states, "Please</p> <p>20 accept the following in response to your</p> <p>21 August 17, 2009, Freedom of Information Law</p> <p>22 (FOIL) request in which you seek records that</p> <p>23 identify the workers' compensation insurance</p> <p>24 carriers of Troy Belting & Supply Co. between</p> <p>25 1960 to 1972."</p>	<p style="text-align: right;">Page 151</p> <p>1</p> <p>2 A. Right.</p> <p>3 Q. And if you look at the code</p> <p>4 conversion sheet, which is the third page of</p> <p>5 the Exhibit-14 --</p> <p>6 A. Right.</p> <p>7 Q. -- if you look for 39, which is</p> <p>8 actually page 2 of the code conversion sheet,</p> <p>9 or page 4 of exhibit, at the top it says,</p> <p>10 Unigard Insurance Co., Unigard Insurance Group</p> <p>11 (Unigard JMSIN), and Unigard Mutual Insurance,</p> <p>12 Co. (Seaton, S-e-a-t-o-n, Insurance Co.),</p> <p>13 right?</p> <p>14 A. Right.</p> <p>15 Q. So if you look at the card that's</p> <p>16 page 2 of Exhibit-14, with respect to a</p> <p>17 particular claimant named William Cramer,</p> <p>18 which is in the upper -- upper right-hand</p> <p>19 corner of page 2 of Exhibit-14, the carrier</p> <p>20 case number and code, the code 039 appears?</p> <p>21 A. Yes.</p> <p>22 Q. And that's also true for a Harold --</p> <p>23 I can't make out if that's Dunham. It looks</p> <p>24 like it's Harold Dunham. It's the card</p> <p>25 right below Mr. Cramer's card. Correct?</p>
<p style="text-align: right;">Page 150</p> <p>1</p> <p>2 Did I read that right?</p> <p>3 A. You did.</p> <p>4 Q. Have you reviewed this document?</p> <p>5 A. I have.</p> <p>6 Q. And the author, Patrick Cremo,</p> <p>7 C-r-e-m-o, senior attorney and records access</p> <p>8 officer with the Workers' Compensation Board</p> <p>9 for the State of New York goes on to say in</p> <p>10 the second paragraph, "I have determined,</p> <p>11 based on my review of the employer cards</p> <p>12 possessed by the board's Albany district</p> <p>13 office, that Troy Belting & Supply Co.</p> <p>14 maintained workers' compensation insurance with</p> <p>15 Unigard Insurance Company on July 23, 1962,</p> <p>16 and March 19, 1964."</p> <p>17 And then he identifies others,</p> <p>18 correct?</p> <p>19 A. He does.</p> <p>20 Q. Did I read that right?</p> <p>21 A. You did.</p> <p>22 Q. And he also states there's a carrier</p> <p>23 three digit code conversion?</p> <p>24 A. Yes.</p> <p>25 Q. And that -- he attaches these cards?</p>	<p style="text-align: right;">Page 152</p> <p>1</p> <p>2 A. That's the -- yeah, I don't know</p> <p>3 what it says either.</p> <p>4 Q. But it also has a 39?</p> <p>5 A. Right.</p> <p>6 Q. A 039, right?</p> <p>7 A. Yes.</p> <p>8 Q. So is it fair to say that -- that</p> <p>9 Exhibit-14 demonstrates that Unigard or</p> <p>10 Jamestown Mutual issued workers' compensation</p> <p>11 insurance policies to Troy Belting & Supply</p> <p>12 Company for those stated periods?</p> <p>13 A. Well, it certainly indicates that one</p> <p>14 of the three Unigard policies that are listed</p> <p>15 -- companies that are listed here provided</p> <p>16 that. I don't know whether this "JMSIN"</p> <p>17 refers to Jamestown or not.</p> <p>18 Q. Right. But it indicates it was a</p> <p>19 workers' compensation policy relationship with</p> <p>20 between Unigard or its predecessor and --</p> <p>21 A. Sure.</p> <p>22 Q. -- Troy Belting, correct?</p> <p>23 MR. BRENNAN: Objection. Objection.</p> <p>24 BY-MR. KOTULA:</p> <p>25 Q. You can answer.</p>



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<p style="text-align: right;">Page 153</p> <p>1</p> <p>2 A. It indicates, yes, that there --</p> <p>3 that one of the Unigard companies was</p> <p>4 providing workers' compensation insurance to</p> <p>5 Troy Belting & Supply Company for this period</p> <p>6 of time.</p> <p>7 Q. Thank you. I'm done with that.</p> <p>8 (Whereupon, Exhibit Number-15 marked.)</p> <p>9 BY-MR.KOTULA:</p> <p>10 Q. We placed before you what the court</p> <p>11 reporter has kindly marked Exhibit-15.</p> <p>12 Exhibit-15 is a one-page document. It states</p> <p>13 it's a binder. It has a case number at the</p> <p>14 top, which I assume this was an exhibit for</p> <p>15 something. And under "Binder," it has Troy</p> <p>16 Belting & Supply Co. as an insured, and it</p> <p>17 refers to a location northwest, or N/W,</p> <p>18 corner of Cohoes, C-o-h-o-e-s, and Elm</p> <p>19 Street, Maplewood, and then it says Albany</p> <p>20 County, New York. And under that it says,</p> <p>21 "Builders Risk," correct?</p> <p>22 A. Yes, it is.</p> <p>23 Q. Did you take a look at what we have</p> <p>24 marked as Exhibit-15 in preparing your</p> <p>25 opinions?</p>	<p style="text-align: right;">Page 155</p> <p>1</p> <p>2 BY-MR.KOTULA:</p> <p>3 Q. Bear with me for a moment.</p> <p>4 Sir, I have placed before you what</p> <p>5 the court reporter has kindly marked as</p> <p>6 Hughes Exhibit-16.</p> <p>7 For the record, it is an insurance</p> <p>8 policy document. I'm not going to represent</p> <p>9 that it's an entire policy. And it states</p> <p>10 -- the initials INA appear on it, and</p> <p>11 there's a -- there's an X in the box for</p> <p>12 PEIC, which I'll represent may be Pacific</p> <p>13 Employers Insurance Company. The named</p> <p>14 insured listed on the declarations page,</p> <p>15 which is page 1 of Exhibit-16, says, "Named</p> <p>16 insured: Troy Belting & Supply Co., Inc.,"</p> <p>17 in Watervliet, New York.</p> <p>18 MR. BRENNAN: Watervliet. And it's</p> <p>19 Cohoes, too.</p> <p>20 MR. KOTULA: Off the record.</p> <p>21 (Whereupon, off the record.)</p> <p>22 BY-MR.KOTULA:</p> <p>23 Q. And this appears to be -- bear a</p> <p>24 policy number of AGP135165 in the upper</p> <p>25 right-hand corner of the first page for a</p>
<p style="text-align: right;">Page 154</p> <p>1</p> <p>2 A. I don't -- I don't think so.</p> <p>3 Q. All right. And the carrier that's</p> <p>4 referenced in this is Atlantic Mutual; is</p> <p>5 that right?</p> <p>6 A. Right.</p> <p>7 Q. In the "Company" column?</p> <p>8 A. Yes.</p> <p>9 Q. Says there's a binder signed 9/24/64?</p> <p>10 A. Yes.</p> <p>11 Q. And the agent that's listed is</p> <p>12 Nicoll & MacChesney, Inc., correct?</p> <p>13 A. Yes.</p> <p>14 Q. You haven't reviewed this document</p> <p>15 before?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Does this indicate there was an</p> <p>18 insuring relationship between Atlantic Mutual</p> <p>19 and Troy Belting to you?</p> <p>20 A. Yes.</p> <p>21 Q. We're done with that.</p> <p>22 (Whereupon, Exhibit Number-16 marked.)</p> <p>23 MR. BRENNAN: 16 is that what we're</p> <p>24 on?</p> <p>25 MR. KOTULA: Yes, sir.</p>	<p style="text-align: right;">Page 156</p> <p>1</p> <p>2 policy period that covers from October 3,</p> <p>3 1974, until canceled. Did I read that</p> <p>4 right?</p> <p>5 A. You -- you read that right, yes.</p> <p>6 Q. And did you review Exhibit-16 in</p> <p>7 preparation of your report and opinions?</p> <p>8 A. I think I've seen this, yes.</p> <p>9 Q. All right. And what does Exhibit-16</p> <p>10 appear to be to you?</p> <p>11 A. Well, it's a package policy providing</p> <p>12 both casualty coverages and property coverages</p> <p>13 for Troy Belting & Supply Company.</p> <p>14 Q. And do you see in the upper</p> <p>15 left-hand corner of the first page, there's</p> <p>16 -- on the dec sheet, there's a box that's</p> <p>17 sort of boilerplate or preprinted form, and</p> <p>18 it says, "Renew or in lieu of"? Might not</p> <p>19 be able to read "of," but it says, "Renew or</p> <p>20 in lieu," and then I think the next word is</p> <p>21 "of."</p> <p>22 A. Right.</p> <p>23 Q. And then it says, "Rewrite,"</p> <p>24 r-e-w-r-i-t-e, "AGP135161."</p> <p>25 A. Right.</p>



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<p style="text-align: right;">Page 157</p> <p>1</p> <p>2 Q. Now, the policy number for this</p> <p>3 policy, Exhibit-16, is AGP135165, right?</p> <p>4 A. Yes.</p> <p>5 MR. FOX: I am going to object --</p> <p>6 I'm going to object to the form to these</p> <p>7 questions. The policy says what it says. I</p> <p>8 understand both the -- both Mr. Kotula and</p> <p>9 the witness are doing their best -- their</p> <p>10 level best to -- to read it, but the fact</p> <p>11 remains, the policy says what it says.</p> <p>12 BY-MR.KOTULA:</p> <p>13 Q. And there's limits of liability</p> <p>14 language in the right-hand side of the first</p> <p>15 page of the dec sheet, coverages A and B,</p> <p>16 legal liability, and there's a preprinted</p> <p>17 number on the former -- or a typed --</p> <p>18 typewritten number, and it says, "300,000</p> <p>19 Each Occurrence, 300,000 Aggregate," is there</p> <p>20 not?</p> <p>21 A. The typewritten says that, yes.</p> <p>22 Q. And then I think you testified about</p> <p>23 scratchings, where an underwriter will take</p> <p>24 an existing policy and in handwriting cross</p> <p>25 out information and supply new information.</p>	<p style="text-align: right;">Page 159</p> <p>1</p> <p>2 MR. FOX: Objection; form, lack of</p> <p>3 foundation, beyond the scope.</p> <p>4 A. I don't know. I mean, rewrite</p> <p>5 usually means that it's a new policy written</p> <p>6 to replace the previous policy, but I don't</p> <p>7 know.</p> <p>8 BY-MR.KOTULA:</p> <p>9 Q. For a previous policy period?</p> <p>10 A. Not necessarily. Usually what it</p> <p>11 means is to replace it with a new policy for</p> <p>12 the same policy period.</p> <p>13 Q. Can it also be used to mean or</p> <p>14 reference a previous policy period?</p> <p>15 MR. FOX: Objection; lack of</p> <p>16 foundation --</p> <p>17 A. I don't --</p> <p>18 MR. FOX: -- and calls for</p> <p>19 speculation.</p> <p>20 A. I don't --</p> <p>21 THE WITNESS: I'm sorry. Excuse me.</p> <p>22 MR. FOX: Did you hear my objection?</p> <p>23 Go ahead.</p> <p>24 A. What the term "rewrite" usually means</p> <p>25 is that it's a new policy that's written to</p>
<p style="text-align: right;">Page 158</p> <p>1</p> <p>2 Is this the sort of thing, where the</p> <p>3 handwriting over the limits of liability</p> <p>4 here?</p> <p>5 A. I don't know. I'll have to look.</p> <p>6 It could be that. I don't -- actually, what</p> <p>7 I think it is, is that the policy was</p> <p>8 actually endorsed to increase the limits to</p> <p>9 \$500,000.</p> <p>10 Q. There's an endorsement elsewhere in</p> <p>11 Exhibit-16 --</p> <p>12 A. Yes.</p> <p>13 Q. -- that says --</p> <p>14 A. November 1, 1975.</p> <p>15 Q. Okay. And that was -- that would</p> <p>16 be more than a year after the inception date</p> <p>17 of this policy of October 3, 1974, right?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Now, can you tell me</p> <p>20 what the significance of the box on the dec</p> <p>21 sheet in the upper left-hand portion of the</p> <p>22 dec sheet that says in the box "Renew or in</p> <p>23 lieu of," and it says, "Rewrite AGP135161,"</p> <p>24 what's that -- what's the significance of</p> <p>25 that, to your knowledge?</p>	<p style="text-align: right;">Page 160</p> <p>1</p> <p>2 replace the entire -- in its entirety an</p> <p>3 older policy. If you're talking about a new</p> <p>4 policy written at the cancellation date of an</p> <p>5 old policy, usually up here it would say</p> <p>6 "new." This indicates that -- that this was</p> <p>7 probably rewritten to replace a policy with</p> <p>8 this policy number that had been previously</p> <p>9 written. I just don't know any more than</p> <p>10 that.</p> <p>11 BY-MR.KOTULA:</p> <p>12 Q. And when you said "this policy</p> <p>13 number," you were pointing at the policy</p> <p>14 number right next to the word "Rewrite" in</p> <p>15 the upper left-hand corner of the dec sheet;</p> <p>16 is that right?</p> <p>17 A. That's correct. That's correct.</p> <p>18 Q. I just wanted the record to reflect</p> <p>19 what you were doing.</p> <p>20 A. Whatever the policy number is. It's</p> <p>21 AGP13, something, 61.</p> <p>22 Q. Right. I'm through with that</p> <p>23 exhibit.</p> <p>24 (Whereupon, Exhibit Number-17 marked.)</p> <p>25 BY-MR.KOTULA:</p>



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<p>1</p> <p>2 Q. Sir, I am showing you now what the</p> <p>3 court reporter has kindly marked as</p> <p>4 Exhibit-17, Hughes Exhibit-17, and it is a</p> <p>5 multi-page document, essentially, pages 1 to</p> <p>6 6 of -- the bottom of the first page says 1</p> <p>7 of 6, and the last page is 6 of 6. And</p> <p>8 there's a company name or logo, Insurance</p> <p>9 Archaeology Group, that appears on the first</p> <p>10 page, the cover page of this. And the</p> <p>11 heading of it, of the document says, "Troy</p> <p>12 Belting & Supply Co., Primary Liability</p> <p>13 Coverage, 1949 to 1984." Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Did I read that right?</p> <p>16 A. You did.</p> <p>17 Q. And have you seen this document</p> <p>18 before?</p> <p>19 A. I have.</p> <p>20 Q. And what do you understand this</p> <p>21 document to be?</p> <p>22 A. This is a document that was prepared</p> <p>23 by the Insurance Archaeology Group, which we</p> <p>24 know affectionately as AIG. And it was, in</p> <p>25 fact, prepared in the marvelous manner in</p>	<p>1</p> <p>2 policies from 1949 to 1954 attributed to</p> <p>3 Jamestown Mutual Insurance Company by</p> <p>4 Insurance Archaeology Group, it has one</p> <p>5 document, right? It says, "Correspondence</p> <p>6 from broker Nicoll & MacChesney dated</p> <p>7 9/15/78"?</p> <p>8 A. Well, that's not just one document.</p> <p>9 It's a group of documents. But, yeah,</p> <p>10 that's what it says.</p> <p>11 Q. And if you go to Exhibit-8, it's a</p> <p>12 letter from Nicoll & MacChesney that we</p> <p>13 looked at earlier dated September 15, 1978,</p> <p>14 right?</p> <p>15 A. How do you -- how do you know</p> <p>16 that's the only document that appears in</p> <p>17 this? I'm telling you that this</p> <p>18 "Correspondence from broker Nicoll &</p> <p>19 MacChesney dated 9/15/78" was a link. It</p> <p>20 was a link -- electronic link that you</p> <p>21 clicked on it, and it took you to the</p> <p>22 repository of the documents which they called</p> <p>23 "Correspondence." So maybe it was just that</p> <p>24 one document. I'm not sure.</p> <p>25 Q. Do you have -- do you have a</p>
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<p>1</p> <p>2 which they usually prepare their -- prepare</p> <p>3 their documents, so that if you look at the</p> <p>4 right-hand side of the document in the</p> <p>5 right-hand column, in the first box, you see</p> <p>6 the correspondence from broker Nicoll &</p> <p>7 MacChesney dated 9/15/78.</p> <p>8 Q. Yes, sir.</p> <p>9 A. That was a link. So if you clicked</p> <p>10 on that link, the file containing all of</p> <p>11 those documents crops up.</p> <p>12 Q. Right.</p> <p>13 A. So this is a -- this is a document</p> <p>14 that was prepared by AIG at the behest of</p> <p>15 Troy Belting and provided to me to give me</p> <p>16 assistance in my work.</p> <p>17 Q. What I am going to do is I am going</p> <p>18 to do an old school popup for you, that if</p> <p>19 you look at the first policy period, which</p> <p>20 is 7/18/49 to 7/18/54, and then it has an</p> <p>21 asterisk, and the asterisk legend says,</p> <p>22 "Denotes information assumed," correct?</p> <p>23 A. Right. That's right.</p> <p>24 Q. And if you look at under "Source</p> <p>25 Detail" in the very far right column, for</p>	<p>1</p> <p>2 document with the links?</p> <p>3 A. I do in my office, yeah.</p> <p>4 MR. BRENNAN: I believe that's been</p> <p>5 produced.</p> <p>6 BY-MR.KOTULA:</p> <p>7 Q. Okay. I'll represent that I believe</p> <p>8 that this is sourcing to one document and</p> <p>9 one document only for that box.</p> <p>10 A. Well, now that -- now that I see,</p> <p>11 instead of talk, look it says 9/15/78. So I</p> <p>12 think you're probably right.</p> <p>13 Q. And then if you look at others, they</p> <p>14 reference something in addition to the --</p> <p>15 like, go to the next box --</p> <p>16 A. You're right.</p> <p>17 Q. -- for 7/18/54 to 7/18/55, it says</p> <p>18 the source detail is two documents, a</p> <p>19 handwritten ledger page and that 9/15/78</p> <p>20 letter from Nicoll & MacChesney, which is</p> <p>21 Exhibit-8 -- Hughes Exhibit-8 to your</p> <p>22 deposition today, right?</p> <p>23 A. That's right.</p> <p>24 Q. And we looked at the ledger pages,</p> <p>25 right?</p>



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<p style="text-align: right;">Page 165</p> <p>1</p> <p>2 A. We did.</p> <p>3 Q. And then if you keep going, '55 to</p> <p>4 '59 -- by the way, all of these periods,</p> <p>5 7/18/49 to 7/18/54, 7/18/54 to 7/18/55, and</p> <p>6 7/18/55 to 7/18/59 they all bear that</p> <p>7 asterisk that the legend says, "Denotes</p> <p>8 information assumed," correct?</p> <p>9 A. That's right.</p> <p>10 Q. And so, again, the '49 to '54 period</p> <p>11 sources to that one exhibit, Exhibit-8, that</p> <p>12 one letter?</p> <p>13 A. Right.</p> <p>14 Q. Which we talked about. The second</p> <p>15 for '54 to '55 sources to that same</p> <p>16 Exhibit-8 and the handwritten ledger page</p> <p>17 that we looked at earlier today --</p> <p>18 A. Right.</p> <p>19 Q. -- correct?</p> <p>20 And then for the period 1955 to</p> <p>21 1959, it, again, sources to the Exhibit-8,</p> <p>22 the one-page letter dated 9/15/78, and then</p> <p>23 it refers to, "Expense account attached to</p> <p>24 income tax reports 1958," which we just</p> <p>25 looked at?</p>	<p style="text-align: right;">Page 167</p> <p>1</p> <p>2 A. Well, the ones -- yes, some of them</p> <p>3 do. I think there may be more than that,</p> <p>4 but that's right, yes. You know, there's a</p> <p>5 letter, the Cigna letter in here and</p> <p>6 correspondence from INA.</p> <p>7 Q. Where's -- which one is that?</p> <p>8 A. Look on page 5. There's minutes of</p> <p>9 the meetings, there's correspondence from INA,</p> <p>10 correspondence from St. Paul.</p> <p>11 Q. All right. Now, page 5 starts to</p> <p>12 detail INA policies, correct?</p> <p>13 A. Correct.</p> <p>14 Q. So it doesn't apply to Jamestown</p> <p>15 Mutual?</p> <p>16 A. Correct. But you didn't -- you</p> <p>17 didn't --</p> <p>18 Q. I didn't specify that. I agree. I</p> <p>19 agree.</p> <p>20 All right. We're through with that</p> <p>21 exhibit, sir.</p> <p>22 A. Excellent.</p> <p>23 MR. KOTULA: Just bear with me a</p> <p>24 second. I think we have been going about an</p> <p>25 hour. Let's take a quick break.</p>
<p style="text-align: right;">Page 166</p> <p>1</p> <p>2 A. Can I interrupt you?</p> <p>3 Q. Sure.</p> <p>4 A. I'm going to save you a lot of time</p> <p>5 and effort. I didn't rely on this document.</p> <p>6 Q. No, no. I'm just asking you --</p> <p>7 A. Well, you the --</p> <p>8 Q. -- to interpret --</p> <p>9 A. Well, I mean, this document is --</p> <p>10 just for the information of the policyholder,</p> <p>11 I used it to sort of as a checklist, but I</p> <p>12 don't consider it information about the</p> <p>13 policy periods as being determinative or</p> <p>14 authoritative at all.</p> <p>15 Q. I understand that.</p> <p>16 A. Okay.</p> <p>17 Q. I appreciate that.</p> <p>18 A. Carry on.</p> <p>19 Q. And so we could go through every</p> <p>20 entry. I'm not going to do that in the</p> <p>21 interest of time. But you would agree with</p> <p>22 me, that these entries refer to specific</p> <p>23 things, such as Exhibit-8, expense account</p> <p>24 documents that we looked at, and handwritten</p> <p>25 ledger pages that we looked at, right?</p>	<p style="text-align: right;">Page 168</p> <p>1</p> <p>2 (Whereupon, break taken, 2:31 p.m. to</p> <p>3 2:39 p.m.)</p> <p>4 (Whereupon, Exhibit Number-18 marked.)</p> <p>5 BY-MR.KOTULA:</p> <p>6 Q. Mr. Hughes, I have placed before you</p> <p>7 what the court reporter has kindly marked as</p> <p>8 Hughes Exhibit-18.</p> <p>9 For the record, Exhibit-18 is a</p> <p>10 multi-page document which appears to be a</p> <p>11 report with a -- with a set of attachments.</p> <p>12 It looks like a three-page letter from Dale</p> <p>13 Pager, D-a-l-e P-a-g-e-r, Esquire, president,</p> <p>14 John R. Probst, P-r-o-b-s-t, Investigations,</p> <p>15 Inc., in Loudonville, New York. It's dated</p> <p>16 August 15, 2011, and it's addressed to</p> <p>17 Richard J. Miller, Jr., Morris & McVeigh,</p> <p>18 LLP, in Albany, New York. And the "re" line</p> <p>19 is Troy Belting.</p> <p>20 Have you seen this document before,</p> <p>21 sir?</p> <p>22 A. No.</p> <p>23 Q. Never seen this document?</p> <p>24 A. No.</p> <p>25 Q. The first sentence of the letter</p>



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1
2 from Mr. Pager says, "You contacted our
3 office and requested that we undertake an
4 investigation on behalf of Troy Belting. You
5 requested that we work in conjunction with
6 David Barcomb of Troy Belting to locate
7 liability coverage that Troy Belting may have
8 had for the years between 1960 and 1974."

9 Do you see that?

10 A. Yes.

11 Q. And if you notice, he states that he
12 searched court records. Do you see that
13 bottom of page 1 of the letter and going
14 over to the top of page 2?

15 A. Yes.

16 Q. And said, "We searched Rensselaer
17 County Supreme/Civil Court for the years in
18 question. We did not find any lawsuit where
19 Troy Belting would have been represented by a
20 liability insurance carrier. During the
21 subject time we found no lawsuits which were
22 filed."

23 Do you see that?

24 A. I do.

25 Q. And then if you go to the top of

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1 Again, I read that right?

2 A. You did.

3 Q. And then he says, "We did a search
4 of Albany County lawsuits for the time in
5 question. We located three lawsuits in which
6 Troy Belting was a plaintiff and none of
7 which they were a defendant. Since these
8 lawsuits were on behalf of Troy Belting for
9 what appeared to be monetary issues, they
10 should not be relevant."

11 And then he lists three index
12 numbers, court case numbers in New York, and
13 Troy Belting is shown as the plaintiff in
14 the, you know, Troy Belting versus the name
15 of three different defendants. Did I read
16 that right?

17 A. Yes.

18 Q. And then he goes on, "We also did a
19 search of federal records and were able to
20 search a date range of 7/23/52 through 5/6/11.
21 We found four lawsuits where Troy Belting was
22 named as a party, but the earliest lawsuit
23 was from the year 2002. There was nothing
24 from the target time period."
25

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1 page 2, "There was one judgment in Rensselaer
2 County against Troy Belting & Supply Co. in
3 favor of City National Bank of Detroit and
4 New York Job Development Authority. This
5 judgment was from 12/22/78, which is outside
6 the time period in question."
7

8 I read that right?

9 A. You did.

10 Q. Then he goes on, "We determined that
11 Saratoga County Court files their lawsuits
12 for the time in question by plaintiff and
13 that" --

14 MR. KOTULA: Is this supposed to be
15 Schenect- --

16 MR. BRENNAN: Schenectady.

17 MR. KOTULA: But it's spelled
18 "Schectady."

19 MR. BRENNAN: Yeah, it's a typo.
20 It's Schenectady.

21 BY-MR. KOTULA:

22 Q. -- "files theirs by the first
23 defendant in the action. We did check
24 anyway but could not find any relevant
25 lawsuits."

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1 Do you see that?

2 A. Yes.

3 Q. All right. So, essentially, he
4 didn't find any information that suggested
5 there was a policy, and he made some
6 suggestions at the end of his letter for
7 what more they could do to try to locate
8 policies?
9

10 MR. BRENNAN: Object to the form.

11 BY-MR. KOTULA:

12 Q. You can see that on the bottom of
13 page 2 where he offers suggestions?

14 A. I see that.

15 Q. So do you have any information that
16 prior to 1976, Troy Belting had any product
17 liability claims filed against it?

18 MR. BRENNAN: Objection.

19 A. Not that I recall.

20 BY-MR. KOTULA:

21 Q. And that would be consistent with --
22 with Exhibit-18?

23 A. I suppose.

24 Q. In your report, you refer to a
25 matter that was filed against Troy Belting



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<p>1 and other parties captioned Nancy Daurio, 2 D-a-u-r-i-o, and filed in Rensselaer County. 3 Do you recall that? 4 A. I do. 5 Q. All right. Have you ever seen a 6 complaint that was filed in the Daurio case? 7 A. I don't recall. 8 Q. Does that mean you don't know if you 9 saw a complaint? 10 A. I don't know if I saw a complaint. 11 Q. All right. I'll represent that I'm 12 not aware of a copy of a complaint being 13 available or being exchanged in this case. 14 MR. BRENNAN: Are you asking me? 15 BY-MR.KOTULA: 16 Q. I'm representing that to you, that 17 it's my information, my best information that 18 no one has a copy of a complaint in the 19 Daurio case. 20 A. Is that a -- is that a question or 21 a statement? 22 Q. Have you in your work on this matter 23 seen a complaint? 24 A. Sitting here this moment, I don't 25</p>	<p>1 it had been settled out of court and -- for 2 \$2,000. Am I right? 3 A. Well, those -- what's listed in the 4 report, yeah, I -- and I don't -- I'm not 5 sure exactly what -- what information was 6 contained in the January 18, '77, minutes 7 other than what I have said here. But I 8 know that I read about that case and that 9 she got her hair caught in some machinery 10 and it pulled her hair out and part of her 11 scalp and all that. 12 Q. You read that in the minutes of the 13 Troy Belting Company, correct? 14 A. I suppose I did. 15 Q. Please bear with me. 16 MR. KOTULA: This will be 19. 17 (Whereupon, Exhibit Number-19 marked.) 18 BY-MR.KOTULA: 19 Q. Sir, we have placed before you what 20 the court reporter has kindly marked Hughes 21 Exhibit-19. 22 For the record, Exhibit-19 is on 23 Troy Belting & Supply Company letterhead, and 24 it says, "Minutes of Directors Meeting, 25</p>
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<p>1 know. I don't recall whether I have or not. 2 Q. Do you reference any allegations from 3 a complaint in the Daurio case in your 4 expert report? 5 A. I don't remember. I'll have to 6 look. 7 Q. Please. 8 MR. BRENNAN: Are you referring 9 specifically to the complaint or from any 10 source? 11 MR. KOTULA: The complaint. 12 MR. BRENNAN: The complaint only? 13 MR. KOTULA: Yes. 14 MR. BRENNAN: Okay. 15 A. (Reviews document.) 16 Now, apparently the information that 17 I had about that came from the minutes of 18 the directors' meetings. 19 BY-MR.KOTULA: 20 Q. Right. And it -- and, essentially, 21 there were two minutes that you referred to. 22 There was one that talked about there being 23 a summons filed in the -- by the Daurios, 24 and then there was another one saying that 25</p>	<p>1 January 18, 1977," and it runs three pages. 2 A. Yes. 3 Q. Do you recall having reviewed 4 Exhibit-19? 5 A. Yes, I do. And on the second page 6 is a pretty -- a pretty good statement about 7 the -- about the matter, and that's where I 8 read that she caught her hair in the jack 9 shaft, which was not guarded. It also says 10 that, "We have received a summons of suit." 11 Q. Right. 12 A. And I don't know how you have a 13 summons of suit if there was never a 14 complaint filed. 15 Q. Yeah, if you see, it says, "We have 16 received a summons of suit dated 11/24/76." 17 And then if you continue down a few 18 sentences, it says, "Since no copy of the 19 complaint has actually been filed, we do not 20 know for sure why we are being sued." And 21 then it gives some explanation from -- 22 attributed to the investigator, correct? 23 A. Right. 24 Q. Are you familiar with something in 25</p>



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1
2 -- you said you're not an attorney, right?
3 A. I did say that.
4 Q. And you're -- is it fair to say
5 you're not generally familiar with New York
6 state court practice?
7 A. That's very fair to say.
8 Q. Are you aware that there's something
9 in New York known as a summons with notice?
10 A. No.
11 Q. Where a party can file a summons
12 under the New York court rules without a
13 complaint?
14 A. No, I didn't know that.
15 Q. I'll represent to you as -- as a
16 New York attorney, that that is something
17 that goes on under the New York court rules,
18 and it's -- it's no secret to any of -- any
19 of the New York attorneys who appear in this
20 case that a plaintiff can often file a
21 summons with notice, which provides very
22 scant detail about what their dispute may be
23 with the named defendants in -- in the
24 caption of the summons, and they're not under
25 an obligation at that time to serve a

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1 rules?
2 Q. No. Are you familiar with the way
3 courts approach duty to defend?
4 A. No.
5 Q. Are you aware that if a claim is
6 made and the allegations potentially are
7 covered, that an insurer may have a duty to
8 defend?
9 A. I'm aware of that, yes.
10 Q. And if the allegations are not
11 clear, an insurer may have a duty to defend
12 pending clarification of what the claims are
13 actually -- that are actually being
14 presented?
15 A. Yes.
16 Q. So if there was just a summons and
17 there was no complaint, an insurance company
18 may have had a duty to defend notwithstanding
19 that they may not have owed coverage for
20 that claim once the facts of the claim are
21 known?
22 MR. BRENNAN: Object to the form.
23 A. Is that a question?
24 BY-MR.KOTULA:
25

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1 complaint.
2 The complaint, and there are
3 provisions -- and I don't know what was done
4 back in 1977 or 1976 because I wasn't a
5 practicing attorney back then in New York,
6 but currently, if someone serves a summons
7 with notice, a party can make a demand for a
8 copy of the complaint, and then the plaintiff
9 has a certain period of time to supply a
10 complaint, to actually file it.
11 MR. BRENNAN: Is that even a
12 question? I'm going to have to object.
13 BY-MR.KOTULA:
14 Q. I mean, even --
15 MR. BRENNAN: And your testimony is
16 stricken since you weren't even an attorney
17 at the time and you admit it.
18 BY-MR.KOTULA:
19 Q. Do you have any knowledge about
20 summons with notice?
21 A. I certainly don't.
22 Q. All right. Are you familiar with --
23 generally, with rules about duty to defend?
24 A. Whose rules? Insurance companies'
25

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1 Q. Yeah. Do you understand that?
2 A. Well, I mean, that's a -- that's a
3 legal question. And in light of what you
4 just told me, it appears that that could be
5 the case, but I don't know.
6 Q. Okay. And since you haven't seen
7 the complaint in the Daurio case, you don't
8 know what the allegations were apart from
9 what's stated here in Exhibit-19, correct?
10 A. That's correct.
11 MR. BRENNAN: Object to the form.
12 (Whereupon, Exhibit Number-20 marked.)
13 BY-MR.KOTULA:
14 Q. Sir, we have placed before you what
15 the court reporter has kindly marked as
16 Hughes Exhibit-20, and it is minutes of the
17 directors meeting on Troy Belting & Supply
18 Company letterhead for January 19, 1982. Do
19 you see that?
20 A. I see it.
21 Q. And are these minutes of the board
22 of directors meeting of Troy Belting that you
23 reviewed in preparing your report?
24 A. They are.
25



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<p style="text-align: right;">Page 181</p> <p>1</p> <p>2 Q. All right. If you notice at the</p> <p>3 bottom of page 1, the last full paragraph,</p> <p>4 it states, "Allen E. Decker advised that the</p> <p>5 suit for \$2.5 million brought by L. Daurio</p> <p>6 and John Daurio against Horton Mfg. Company</p> <p>7 and Troy Belting & Supply Company has been</p> <p>8 settled out of court. Troy Belting's</p> <p>9 insurance company, Unigard Insurance Company,</p> <p>10 settled for \$2,000."</p> <p>11 Did I read that right?</p> <p>12 A. You did.</p> <p>13 Q. And aside from this document,</p> <p>14 Exhibit-20, you have no information about</p> <p>15 what's related in this paragraph, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. You don't have another source for</p> <p>18 it?</p> <p>19 A. No, I don't.</p> <p>20 Q. Now, am I correct, that Exhibit-19</p> <p>21 at page 2 states that the Daurio case</p> <p>22 relates to an accident on May 9th, 1974?</p> <p>23 A. Correct.</p> <p>24 Q. All right. So is it fair to say</p> <p>25 that the information that's contained in</p>	<p style="text-align: right;">Page 183</p> <p>1</p> <p>2 electric motor repair and rewinding."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you understand that their work in</p> <p>6 electric motor repair and rewinding came</p> <p>7 after 1974?</p> <p>8 A. No.</p> <p>9 Q. All right. Would that -- would that</p> <p>10 be relevant to you if it did happen after</p> <p>11 1974?</p> <p>12 A. Not really. I -- I entered that</p> <p>13 because I wanted to be thorough in describing</p> <p>14 what they did, but it never occurred to me</p> <p>15 that I had a timing problem there.</p> <p>16 Q. And the next sentence you say that,</p> <p>17 "In addition to January 21, 1986, minutes,</p> <p>18 described the formation of Division Number 3,</p> <p>19 which was providing engineering and technical</p> <p>20 services for electrical distribution equipment</p> <p>21 and were also going to install electrical and</p> <p>22 mechanical equipment."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And isn't it fair to say from just</p>
<p style="text-align: right;">Page 182</p> <p>1</p> <p>2 Exhibits-19 and 20 doesn't tell us anything</p> <p>3 about the period before 1974?</p> <p>4 MR. BRENNAN: Object to the form.</p> <p>5 A. I think that's right.</p> <p>6 BY-MR.KOTULA:</p> <p>7 Q. I want to refer you to page 6 of</p> <p>8 your expert report in this case, which is</p> <p>9 Exhibit-1.</p> <p>10 In the first full paragraph, you</p> <p>11 state, "In this case" -- it's the second</p> <p>12 sentence -- "we know, for instance, that Troy</p> <p>13 Belting & Supply Company was engaged in the</p> <p>14 distribution of industrial supplies and</p> <p>15 equipment, including power transmission</p> <p>16 equipment and industrial rubber products."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. What's the source of that?</p> <p>20 A. It's -- it's somewhere in this</p> <p>21 documentation that -- that -- that says that.</p> <p>22 I don't remember exactly where it is.</p> <p>23 Q. You say, "We also know, according to</p> <p>24 the information on their letterhead and in</p> <p>25 their correspondence, that they engaged in</p>	<p style="text-align: right;">Page 184</p> <p>1</p> <p>2 reading that sentence, that that type of work</p> <p>3 and operation was not something they were</p> <p>4 doing before 1986, certainly not before 1974?</p> <p>5 A. Sure.</p> <p>6 Q. Then you say, "This information</p> <p>7 assists greatly in the determination of the</p> <p>8 character of the insurance program that was</p> <p>9 purchased by Troy," correct?</p> <p>10 A. Yes.</p> <p>11 Q. So some of that information doesn't</p> <p>12 actually shed light on what type of insurance</p> <p>13 Troy may have bought prior to 1974?</p> <p>14 A. That's right. But your client is</p> <p>15 not the only insurance company in this case.</p> <p>16 Q. I appreciate that. I just wanted to</p> <p>17 be sure we were on the same page and I was</p> <p>18 reading this correctly.</p> <p>19 A. That's right.</p> <p>20 Q. Now, you say, 1, "A significant</p> <p>21 proportion of their business involved the</p> <p>22 sale of industrial equipment. It would not</p> <p>23 be reasonable to presume that any company</p> <p>24 could involve themselves in such a business</p> <p>25 without having product liability coverage."</p>



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<p style="text-align: right;">Page 185</p> <p>1</p> <p>2 Did I read that right?</p> <p>3 A. You did.</p> <p>4 Q. And then you say, 2, "The sale of</p> <p>5 power transmission equipment would most likely</p> <p>6 be to contractors who would, without a doubt,</p> <p>7 be required by their customers to provide</p> <p>8 certificates of insurance evidencing at least</p> <p>9 premises operations and products-completed</p> <p>10 operations coverage with significant limits of</p> <p>11 liability."</p> <p>12 Did I read that right?</p> <p>13 A. Yes.</p> <p>14 Q. Have you seen any certificates of</p> <p>15 insurance evidencing coverage for the gap</p> <p>16 period from 1949 to 1974?</p> <p>17 A. No, I haven't.</p> <p>18 Q. And then 3, you say, "The</p> <p>19 installation of electrical and mechanical</p> <p>20 equipment would only have been possible if</p> <p>21 Troy could have provided certificates of</p> <p>22 insurance in their own name, evidencing the</p> <p>23 existence of liability coverage for at least</p> <p>24 the premises operations products and completed</p> <p>25 operations coverage."</p>	<p style="text-align: right;">Page 187</p> <p>1</p> <p>2 equipment and industrial rubber products. I</p> <p>3 don't know, sitting here today, whether that</p> <p>4 included installation or not.</p> <p>5 BY-MR.KOTULA:</p> <p>6 Q. All right. If it didn't include</p> <p>7 installation of electrical and mechanical</p> <p>8 equipment prior to and including 1974, then</p> <p>9 that wouldn't be relevant to the gap period</p> <p>10 of 1949 to 1974, right?</p> <p>11 A. That's right.</p> <p>12 Q. So I want to focus on Item 1 on</p> <p>13 page 6 of your report. You say, "It would</p> <p>14 not be reasonable to presume that any company</p> <p>15 could involve themselves in such a business</p> <p>16 without having product liability coverage."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Are you aware that the law of</p> <p>20 product liability underwent a dramatic change</p> <p>21 in the -- in the early 1970s in this</p> <p>22 country?</p> <p>23 A. Yes.</p> <p>24 MR. BRENNAN: Object to the form.</p> <p>25 THE WITNESS: Sorry.</p>
<p style="text-align: right;">Page 186</p> <p>1</p> <p>2 Did read that right?</p> <p>3 A. You did.</p> <p>4 Q. And that's work that wasn't happening</p> <p>5 before 1974, right?</p> <p>6 A. I don't know whether it was</p> <p>7 happening before 1974 or not.</p> <p>8 Q. Well, the sentence that we read, "In</p> <p>9 addition, the January 21, 1986, minutes</p> <p>10 described the formation of Division Number 3,</p> <p>11 which was providing engineering and technical</p> <p>12 services for electrical distribution equipment</p> <p>13 and were also going to install electrical and</p> <p>14 mechanical equipment."</p> <p>15 And you testified just a few minutes</p> <p>16 ago that that isn't relevant to the gap</p> <p>17 period from 1949 to 1974 because that was</p> <p>18 something new that they had gotten into, and</p> <p>19 you said that that was information put in</p> <p>20 the report relating to other carriers?</p> <p>21 MR. BRENNAN: Object to the form.</p> <p>22 A. Well, what I was telling you is that</p> <p>23 before that, they were engaged in the</p> <p>24 distribution of industrial supplies and</p> <p>25 equipment, which included power transmission</p>	<p style="text-align: right;">Page 188</p> <p>1</p> <p>2 A. Yes.</p> <p>3 BY-MR.KOTULA:</p> <p>4 Q. And are you aware that prior to</p> <p>5 that, there wasn't a concept of strict</p> <p>6 product liability in the United States?</p> <p>7 MR. BRENNAN: Object to the form.</p> <p>8 A. I know something about that.</p> <p>9 BY-MR.KOTULA:</p> <p>10 Q. Okay. And are you aware that the</p> <p>11 State of New York, the high court in the</p> <p>12 state of New York, which is the New York</p> <p>13 court of appeals, in 1973, in the Codling,</p> <p>14 C-o-d-l-i-n-g, vs. Paglia, P-a-g-l-i-a case,</p> <p>15 1973, adopted strict product liability for</p> <p>16 the first time in New York?</p> <p>17 MR. BRENNAN: Object to form.</p> <p>18 A. Am I aware of that?</p> <p>19 BY-MR.KOTULA:</p> <p>20 Q. Yeah.</p> <p>21 A. Yes, I am.</p> <p>22 Q. All right. And how are you aware</p> <p>23 of that?</p> <p>24 A. Well, it's an issue that -- that one</p> <p>25 needs to understand when -- or needed to</p>



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2 understand at the time when advising clients
3 about the purchase of product liability
4 insurance. Not necessarily the fact of the
5 purchase of liability insurance, but the --
6 the amount of the limits that would need to
7 be purchased in order to -- in order to
8 protect the company from not only their own
9 individual exposures but also the exposures
10 that come to them through the application of
11 strict liability.

12 Q. Right. So prior to 1973 in New
13 York, companies like Troy Belting -- Troy
14 Belting didn't have -- didn't face strict
15 product liability exposure?

16 MR. BRENNAN: Object to the form.
17 BY-MR.KOTULA:

18 Q. You understood that?

19 MR. BRENNAN: Object to the form;
20 beyond the scope of the expertise.

21 A. I mean, if -- I -- I don't know
22 exactly when the strict liability law came
23 in. If you're asking before that law if
24 companies in New York faced a strict
25 liability, I don't actually know the answer

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1
2 MR. BRENNAN: Object to form.

3 A. I don't have any specific information
4 about that particular period of time, but
5 when you read on into the -- to the -- as
6 time goes by and you read the -- the
7 directors' minutes, they were very concerned
8 about that. Now, it may be that it was
9 because the doctrine of strict liability had
10 risen and that caused them to be concerned
11 about it. But they -- they were a company
12 that was interested in their insurance
13 program and paid a lot of attention to it.
14 BY-MR.KOTULA:

15 Q. Now, in 19 -- as I understand it,
16 the board of directors' minutes that we have
17 run from 1978 -- 1977 to through the 1980s.
18 Correct?

19 MR. BRENNAN: Hold on. Just for
20 the record, I would like to insert on the
21 record that all of the minutes were produced
22 and a site inspection. To the extent that
23 that's what you have, that's what was
24 selected and requested specifically by counsel
25 at that time. And I know you're new to the

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1
2 to that question.

3 BY-MR.KOTULA:

4 Q. Okay.

5 A. But I will tell you this, that the
6 -- the question of whether or not strict
7 liability applied never affected the -- the
8 decision of my clients as to whether to
9 purchase product liability coverage, because
10 most of them, especially companies that were
11 the size and character of Troy Belting, felt
12 that they couldn't afford to sustain a
13 product liability claim that arose out of
14 products that -- that they had that directly
15 caused injury to particularly members of the
16 public.

17 Q. Now, Troy Belting was not one of
18 your clients when you were an insurance
19 agent?

20 A. No, they were not.

21 Q. And you don't have any information
22 that in the gap period from 1949 to 1974,
23 Troy Belting was concerned about product
24 liability claims, that it purchased product
25 liability coverage for that entire time?

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1
2 case, but I do want the record to reflect
3 that --

4 MR. KOTULA: Sure.

5 MR. BRENNAN: -- for accuracy.

6 BY-MR.KOTULA:

7 Q. Are you aware of any board of
8 directors' minutes prior to 1977 that reflect
9 a concern about product liability exposures
10 to the company?

11 A. No, I'm not.

12 Q. Okay. And are you aware that in
13 1975, the New York state legislature amended
14 the Uniform Commercial Code to adopt strict
15 product liability?

16 MR. BRENNAN: Object to form.

17 A. No.

18 MR. KOTULA: Are we at 21?

19 (Whereupon, Exhibit Number-21 marked.)

20 BY-MR.KOTULA:

21 Q. Sir, we have placed before you what
22 the court reporter has kindly marked Hughes
23 Exhibit-21. It's a Nebraska Law Review
24 article by Roger Henderson, professor at the
25 University of Nebraska College of Law, 1971.



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<p>1 2 And the title of the article is "Insurance 3 Protection for Products Liability and 4 Completed Operations, What Every Lawyer Should 5 Know." 6 Have you ever seen this document 7 before? 8 A. No. 9 Q. All right. I'll represent to you 10 that Roger Henderson's article has been cited 11 by a number of courts around the country, 12 this very article. And I don't know if 13 you've ever heard of a case from the New 14 Jersey Supreme Court, Weedo vs. Stone-E-Brick, 15 having to do with construction defects, your 16 work exclusion, and that sort of -- 17 A. No. 18 Q. Okay. 1971, page 2 of the exhibit, 19 the first sentence, Mr. Henderson says, 20 "There have been many recent changes in the 21 field of tort law." 22 MR. BRENNAN: Hold on. Hold on. 23 Page 2 of -- just the second page of the -- 24 MR. KOTULA: Yeah, it's the very 25 first paragraph. I'm not referring to the</p>	<p>1 2 A. What subject? 3 BY-MR.KOTULA: 4 Q. The changes, the recent changes in 5 the field of tort law regarding product 6 liability. We talked about strict -- your 7 knowledge of the trend of strict product 8 liability? 9 A. Yes, I'm familiar with those changes. 10 Q. So if you go down to the next 11 paragraph on page 2 of the exhibit, he says, 12 "Certainly not every manufacturer that is 13 sued on a products liability theory is a 14 giant automobile manufacturer or chemical 15 company in a distant location. There are 16 many small and medium-sized manufacturers, not 17 to mention wholesalers and retailers whether 18 in the form of sole proprietorships or 19 partnerships or corporations that are subject 20 to suits for products liability. One wonders 21 how many of these entities are aware of the 22 extent of their exposure and whether they are 23 properly protected by insurance." 24 Do you see that? 25 A. I do.</p>
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<p>1 2 coverage but the actual first sentence of the 3 article. 4 A. I notice, by the way, he's a good 5 University of Texas boy. 6 BY-MR.KOTULA: 7 Q. Okay. So you like him? 8 A. I don't know. 9 MR. BRENNAN: Object to form. 10 BY-MR.KOTULA: 11 Q. You're inclined to like him. Your 12 Texas is showing. 13 "There have been many recent changes 14 in the field of tort law but none as 15 personal and important to each member of our 16 society as the changes in tort liability 17 theories for injuries associated with products 18 and related services." 19 Do you see that? 20 A. I do. 21 Q. And you're familiar with this subject 22 just because of how it affected your clients, 23 correct? 24 MR. BRENNAN: Object to the form. 25 What subject?</p>	<p>1 2 Q. And that's a fair observation by Mr. 3 Henderson, is it not? 4 MR. BRENNAN: Objection. 5 A. It would be a fair observation at 6 any time. 7 BY-MR.KOTULA: 8 Q. Right. Done with that exhibit. 9 A. That was quick. 10 Q. Sir, you also talk about a claim -- 11 an asbestos claim involving a gentleman named 12 Pennell. Do you recall that? 13 A. Yes. Pennell. 14 Q. How do you spell it? 15 A. I thought you said "Canal." 16 Q. I said Pennell. 17 A. Oh, I'm sorry. You're right. 18 Q. Maybe I -- I was not enunciating 19 correctly. 20 A. No, I probably wasn't listening 21 correctly. 22 Q. And what's your understanding of what 23 the Pennell case involved? 24 A. Oh, I've actually forgotten. 25 Q. Okay. Do you understand it was an</p>



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2 asbestos bodily injury case?
3 A. I do understand that.
4 Q. And do you know whether it was a
5 product exposure or a premises operations
6 exposure?
7 A. I thought it was a products
8 exposure, but I'm not sure.
9 Q. Because I think earlier in the day
10 you may have said something about it being a
11 premises operations exposure, and I just
12 wanted to know if you could clarify that.
13 A. No, I -- well, I remember you --
14 you -- you had said something that I thought
15 needed correcting, which would -- I thought
16 you had said something that would indicate
17 the only asbestos exposure that you might
18 have would be products exposure, and I
19 corrected you to say, well, actually,
20 sometimes you'll have a premises and
21 operations exposure when you have an
22 installation situation, but I wasn't referring
23 to the Pennell case specifically.
24 Q. Okay. And is it your understanding
25 that -- that the Pennell case was defended

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1
2 entirely at the expense of Pacific Employers
3 Insurance Company?
4 A. I think I knew that, yes.
5 Q. And is it your understanding that
6 when the Pennell case was settled, Pacific
7 Employers Insurance Company paid the full
8 amount of the settlement on behalf of Troy
9 Belting?
10 A. I believe that's correct.
11 Q. Is it also your understanding that
12 no one asked Jamestown Mutual Insurance
13 Company or Unigard Insurance Company or QBE
14 Americas to pay any amount towards the
15 defense of the Pennell matter on behalf of
16 Troy Belting?
17 MR. BRENNAN: Objection.
18 A. I don't know whether that's true or
19 not.
20 BY-MR. KOTULA:
21 Q. You can't say one way or the other?
22 A. That's right.
23 Q. And is it your understanding that no
24 one ever asked Jamestown Mutual Insurance
25 Company or Unigard Insurance Company or QBE

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1
2 Americas to pay any portion of the settlement
3 amount on behalf of Troy Belting?
4 MR. BRENNAN: Objection.
5 A. I don't know if that's true or not.
6 BY-MR. KOTULA:
7 Q. Again, you don't know one way or the
8 other?
9 A. I don't.
10 Q. And do you believe that something
11 having to do with the Pennell matter reflects
12 that Jamestown Mutual Insurance Company or
13 Unigard Insurance Company issued a policy or
14 policies of insurance in the gap period from
15 1949 to 1974?
16 A. Well, I believe that -- that there
17 -- there are things that they did and their
18 behavior at the time indicated to me they
19 were concerned that there was a potential --
20 potential for coverage, and that if they
21 thought they didn't have any coverage or they
22 never wrote coverage that would cover the
23 Pennell case, I would have expected them to
24 file a reservation of rights very early,
25 which they did not -- apparently, did not

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1
2 do. I didn't see any denial of liability on
3 their part at all. So just that was the
4 reason for my citing the Pennell case.
5 Q. Now, you say you didn't see any
6 denial, correct?
7 A. Correct.
8 Q. But that doesn't mean that there
9 wasn't a denial?
10 A. It doesn't necessarily mean that
11 there wasn't a denial, except that -- now,
12 I'm not handling the claims part of this
13 case.
14 Q. So you're not offering an opinion
15 about that?
16 A. Not about claims handling. But I
17 did read -- oh, Lord, I'm going -- it's late
18 in the day. I can't remember his --
19 Q. Mr. O'Malley?
20 A. No, no. One of the claims people
21 in this -- Dickson, was it, or -- I'm not
22 sure. But just a minute and I'll tell you.
23 Q. Sure.
24 A. Oh, Mr. Field. Who seemed to me to
25 be very meticulous. And, you know, I just



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<p>1 would have expected, that given the</p> <p>2 circumstances, that if Unigard had felt like</p> <p>3 they had absolutely no responsibility for</p> <p>4 that -- for that case, they would have</p> <p>5 immediately filed a reservation of rights or</p> <p>6 issued a denial letter, rather than</p> <p>7 monitoring the case for months and months and</p> <p>8 -- and risking, I would think, the chance</p> <p>9 that they might be drawn into it and</p> <p>10 required to contribute defense costs and</p> <p>11 maybe even indemnity costs.</p> <p>12</p> <p>13 Q. But you're not aware of any evidence</p> <p>14 that they ever did -- that they were ever</p> <p>15 asked to contribute defense or indemnity</p> <p>16 costs or that they ever did do so?</p> <p>17 A. No.</p> <p>18 Q. And are you testifying as an expert</p> <p>19 that an insurance company that receives</p> <p>20 notice of a claim is not supposed to conduct</p> <p>21 an investigation --</p> <p>22 MR. BRENNAN: Objection.</p> <p>23 BY-MR.KOTULA:</p> <p>24 Q. -- regarding that claim?</p> <p>25 A. No, I'm not.</p>	<p>1 dispose of their insurance policies when they</p> <p>2 had expired.</p> <p>3</p> <p>4 As a matter of fact, when I was in</p> <p>5 the agency business, I wouldn't give my</p> <p>6 clients their insurance policies. I kept</p> <p>7 them and gave them copies because I knew</p> <p>8 they were liable to do that. But -- so I --</p> <p>9 I was not all that surprised to say -- to</p> <p>10 see that there's not any policies available.</p> <p>11 BY-MR.KOTULA:</p> <p>12 Q. That's what I was saying, you</p> <p>13 weren't.</p> <p>14 A. But I am surprised to see that there</p> <p>15 was not -- because the documentation that we</p> <p>16 have on the Pennell claim is far more</p> <p>17 contemporary than was policies all the way</p> <p>18 back to 1949. And also involved what I</p> <p>19 thought was a rather meticulous claims</p> <p>20 handling on the part of the -- I believe it</p> <p>21 was Mr. Field who was involved in handling</p> <p>22 the claims, and he seemed to me like he</p> <p>23 dotted every "I" and crossed every "T."</p> <p>24 Q. But you're not offering an opinion</p> <p>25 about the claims handling aspects?</p>
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<p>1</p> <p>2 Q. And you were surprised you didn't</p> <p>3 see a disclaimer or a reservation of rights</p> <p>4 letter from Unigard or Jamestown Mutual, but</p> <p>5 you're not surprised that you don't see any</p> <p>6 insurance policies for the entire gap period</p> <p>7 from 1949 to 1974. Why is that?</p> <p>8 MR. BRENNAN: Objection.</p> <p>9 A. Where did you get the idea I wasn't</p> <p>10 surprised that we didn't see any insurance</p> <p>11 coverage for the entire gap period?</p> <p>12 BY-MR.KOTULA:</p> <p>13 Q. No, no. You said you were surprised</p> <p>14 that you didn't see a reservation of rights</p> <p>15 letter or a disclaimer letter from Unigard</p> <p>16 with respect to Pennell, but you were not</p> <p>17 surprised that Troy Belting doesn't have any</p> <p>18 actual insurance policies in the gap period</p> <p>19 from 1949 to 1974.</p> <p>20 MR. BRENNAN: Objection.</p> <p>21 A. I mean, you're talking about apples</p> <p>22 and oranges. In the terms of the policies</p> <p>23 themselves, we have information here that</p> <p>24 Troy Belting, like many other policyholders,</p> <p>25 very foolishly decided they were going to</p>	<p>1</p> <p>2 A. Not other than the fact that it</p> <p>3 would indicate to me that there was something</p> <p>4 about the situation that made Unigard feel</p> <p>5 that they had the potential for coverage,</p> <p>6 that they had -- they had to conduct a very</p> <p>7 meticulous investigation, which they did do,</p> <p>8 and that they never posted a reservation of</p> <p>9 rights letter.</p> <p>10 Q. And were never asked to pay</p> <p>11 anything?</p> <p>12 MR. BRENNAN: Objection.</p> <p>13 A. Is that a question?</p> <p>14 BY-MR.KOTULA:</p> <p>15 Q. Yes.</p> <p>16 A. Well, we have already agreed that I</p> <p>17 don't know that they were ever asked to pay</p> <p>18 anything.</p> <p>19 Q. Right. And it wasn't just Troy</p> <p>20 Belting that didn't retain copies of their</p> <p>21 policies?</p> <p>22 A. No, it wasn't.</p> <p>23 Q. It was -- it was -- it was the</p> <p>24 agent or the broker for Troy Belting also</p> <p>25 didn't keep copies of the policies, right?</p>



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<p>1</p> <p>2 MR. BRENNAN: Objection.</p> <p>3 BY-MR.KOTULA:</p> <p>4 Q. I mean, that's -- isn't that right?</p> <p>5 A. Well, I think that's correct.</p> <p>6 Q. And that may be even more surprising</p> <p>7 than Troy Belting not keeping them. But</p> <p>8 these were -- you know, in the period you</p> <p>9 say they were CGL policies. There's evidence</p> <p>10 that there may have been manufacturers and</p> <p>11 contractors policy or policies. But both of</p> <p>12 those, as I understand it, would be written</p> <p>13 on an occurrence basis, not a claims-made</p> <p>14 basis. Is that right?</p> <p>15 MR. BRENNAN: Objection.</p> <p>16 A. Well, nothing had been written on a</p> <p>17 claims-made basis, but the policies -- the</p> <p>18 early -- if they were, indeed, manufacturers</p> <p>19 and contractors policies, it would have been</p> <p>20 written on a cause-by-accident basis.</p> <p>21 BY-MR.KOTULA:</p> <p>22 Q. Cause-by-accident or accident which</p> <p>23 then at some point in time in the history of</p> <p>24 insurance --</p> <p>25 A. 1966.</p>	<p>1</p> <p>2 would extend to that?</p> <p>3 A. Well, that's why I said as long as</p> <p>4 it was triggered, which would automatically</p> <p>5 mean there was a grant of coverage.</p> <p>6 Q. If Pacific Employers Insurance Company</p> <p>7 had paid all of the defense and all of the</p> <p>8 indemnity for the Pennell matter, do you have</p> <p>9 any information as to why they may have done</p> <p>10 so?</p> <p>11 MR. BRENNAN: Objection.</p> <p>12 A. No, I don't.</p> <p>13 BY-MR.KOTULA:</p> <p>14 Q. You haven't offered an opinion about</p> <p>15 that, have you?</p> <p>16 A. No, I don't.</p> <p>17 MR. KOTULA: I have no further</p> <p>18 questions at this time.</p> <p>19 EXAMINATION</p> <p>20 BY-MR.FOX:</p> <p>21 Q. Good afternoon, Mr. Hughes. I</p> <p>22 introduced myself earlier. I'm Brian Fox.</p> <p>23 I represent the plaintiff, Pacific Employers</p> <p>24 Insurance Company, in this case.</p> <p>25 Let me turn to your expert report in</p>
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<p>1</p> <p>2 Q. -- they became occurrence based,</p> <p>3 which still defined occurrence as an</p> <p>4 accident, including other things, correct?</p> <p>5 A. That's right. 1966.</p> <p>6 MR. BRENNAN: Objection.</p> <p>7 BY-MR.KOTULA:</p> <p>8 Q. But whether it's a cause-by-accident</p> <p>9 or an accident or an occurrence basis, if --</p> <p>10 if something happens during that policy</p> <p>11 period that results in bodily injury or</p> <p>12 property damage, those policies could be</p> <p>13 asked to respond, provided there's -- there's</p> <p>14 a coverage grant for that, and occurrence is</p> <p>15 part of that or caused-by-accident or</p> <p>16 accident is part of that, isn't it?</p> <p>17 A. That's right. And they're evergreen</p> <p>18 in nature.</p> <p>19 Q. So although the policy period may</p> <p>20 expire, if a claim isn't presented until much</p> <p>21 later, it could still be covered under the</p> <p>22 earlier policy, right?</p> <p>23 A. As long as the policy was triggered</p> <p>24 and it was not excluded, that's right.</p> <p>25 Q. And had a grant of coverage that</p>	<p>1</p> <p>2 this case, Hughes Exhibit-1. And if we can</p> <p>3 turn to page 3, which is the opinions</p> <p>4 section of your report, you -- am I correct,</p> <p>5 you state in that -- that second paragraph</p> <p>6 underneath "Opinions," "It is my professional</p> <p>7 opinion that, with little doubt, Insurance</p> <p>8 Company of North America, 'INA,' issued</p> <p>9 Policy Number XBC-099288 to Troy Belting</p> <p>10 effective 10/3/74, expiring 10/3/75."</p> <p>11 Did I read that correctly?</p> <p>12 A. Yes, you did.</p> <p>13 Q. And that is your opinion; is that</p> <p>14 right?</p> <p>15 A. Yes, it is.</p> <p>16 Q. Have -- have you ever seen that</p> <p>17 allegedly missing policy?</p> <p>18 A. I don't think so, no.</p> <p>19 Q. Have you ever seen any portions of</p> <p>20 that allegedly missing policy?</p> <p>21 A. I don't remember. Let me look.</p> <p>22 (Whereupon, reviews document.)</p> <p>23 I don't think so.</p> <p>24 BY-MR.FOX:</p> <p>25 Q. Have you ever seen any reference to</p>



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<p style="text-align: right;">Page 209</p> <p>1</p> <p>2 that allegedly missing policy in any court</p> <p>3 records?</p> <p>4 A. No, I don't think so.</p> <p>5 Q. Have you ever seen any reference to</p> <p>6 that allegedly missing policy in any other</p> <p>7 insurance policy?</p> <p>8 A. I don't think so.</p> <p>9 Q. Let me -- let me turn to Exhibit-C</p> <p>10 of your report. And tell me when you've --</p> <p>11 when you have it in front of you.</p> <p>12 A. I've got it.</p> <p>13 Q. Okay. Exhibit-C, am I correct, is a</p> <p>14 -- it's entitled, "Documents Reviewed and</p> <p>15 Considered By Robert Hughes"?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And you reviewed all of the</p> <p>18 documents on Exhibit-C in -- in considering</p> <p>19 and forming your opinions in this case; is</p> <p>20 that correct?</p> <p>21 A. I did, yes, that's correct.</p> <p>22 Q. And was there anything that you</p> <p>23 wanted to review that was not provided to</p> <p>24 you as reflected on Exhibit-C?</p> <p>25 A. Other than complete copies of the</p>	<p style="text-align: right;">Page 211</p> <p>1</p> <p>2 or below --</p> <p>3 A. Right.</p> <p>4 Q. -- the missing policy?</p> <p>5 A. Right.</p> <p>6 Q. Okay. Let me -- let me ask you to</p> <p>7 turn your attention to Exhibit -- Hughes</p> <p>8 Exhibit-16 that Mr. Kotula put before you</p> <p>9 this afternoon.</p> <p>10 A. I've got it.</p> <p>11 Q. And that's a -- the -- those are</p> <p>12 documents relating to a Pacific Employers</p> <p>13 policy; is that correct?</p> <p>14 A. That's right, the primary policy.</p> <p>15 Q. And I believe you testified in</p> <p>16 response to one of Mr. Kotula's questions</p> <p>17 concerning Exhibit-16, that you reviewed this</p> <p>18 document in connection with this matter.</p> <p>19 First of all, is that -- is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Could you indicate to me where on</p> <p>22 Exhibit-C that's reflected?</p> <p>23 A. It's not specifically listed, but I</p> <p>24 suspect that this was an exhibit -- or this</p> <p>25 was in one of the sets of documents that are</p>
<p style="text-align: right;">Page 210</p> <p>1</p> <p>2 missing policies?</p> <p>3 Q. Yes.</p> <p>4 A. No, not that I -- there wasn't</p> <p>5 anything I asked for that I wasn't given.</p> <p>6 Q. Okay. And let me turn to a couple</p> <p>7 of the exhibits that Mr. Kotula introduced.</p> <p>8 So first of all, am I correct, Mr.</p> <p>9 Hughes, that you testified earlier that you</p> <p>10 would expect a policy above or below a</p> <p>11 missing policy to -- to list some information</p> <p>12 about the missing policy?</p> <p>13 A. No. I said I would -- would expect</p> <p>14 an excess policy above the missing policy to</p> <p>15 contain information about the missing policy.</p> <p>16 I said that -- that often the policy below</p> <p>17 the missing policy, if you were fortunate to</p> <p>18 have this scratched-up copy for renewal,</p> <p>19 would -- would tell you something about the</p> <p>20 missing policy, but only a scratched copy of</p> <p>21 the -- of the prior to policy would</p> <p>22 indicate.</p> <p>23 Q. And Mr. Kotula showed you an excerpt</p> <p>24 -- excerpt of your deposition from another</p> <p>25 case in which you talked about policies above</p>	<p style="text-align: right;">Page 212</p> <p>1</p> <p>2 listed here generically, perhaps as an</p> <p>3 exhibit to one of the other -- one of the</p> <p>4 other depositions. I'm not sure. It's not</p> <p>5 specifically listed, you're correct.</p> <p>6 Q. And it's -- it's your understanding</p> <p>7 that if it is listed here in Exhibit-C in</p> <p>8 some manner, it's because it was an exhibit</p> <p>9 to one of the deposition transcripts that is</p> <p>10 listed on Exhibit-C?</p> <p>11 A. Right. Or because it was in one of</p> <p>12 these documents from Troy Belting. For</p> <p>13 instance, the Pennell documents, I don't know</p> <p>14 whether it was in either one of those.</p> <p>15 Q. So I'm -- just for terminology sake,</p> <p>16 Mr. Hughes, I am going to -- I am going to</p> <p>17 continue to refer to this -- the policy --</p> <p>18 the allegedly missing policy -- INA allegedly</p> <p>19 missing policy that you refer to in your</p> <p>20 expert report, I'm just going to continue to</p> <p>21 refer to that as the allegedly missing</p> <p>22 policy. Is that okay?</p> <p>23 A. That's fine.</p> <p>24 Q. Okay. Is there any information at</p> <p>25 all about the allegedly missing policy</p>



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<p>1 2 anywhere in Exhibit-16?</p> <p>3 A. I doubt it. I can look at every 4 page. I don't think there is.</p> <p>5 Q. Okay. And is it -- and am I 6 correct, that it's your understanding that 7 Exhibit-16 relates to a primary policy that 8 would be below the allegedly missing policy? 9 Is that right?</p> <p>10 A. Right.</p> <p>11 Q. Okay. I'm done with 16. 12 Now, you testified as to one of Mr. 13 -- one of Mr. Kotula's questions that -- 14 with respect to Hughes Exhibit-17. So, 15 actually, let me ask you to get that in 16 front of you. That was provided to you in 17 connection with this matter, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And is that the document -- if 20 you're looking at Exhibit-C, if I can draw 21 your attention there, is that the document 22 referred to as the fifth document from the 23 bottom on Exhibit-C?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And just for the record,</p>	<p>1 2 mostly -- or exclusively, perhaps, Jamestown 3 are the first four pages. So from page 5, 4 between that -- 5 and 6, or anywhere in the 5 document, but do you see any reference to 6 any alleged policy number -- I'm just reading 7 from your report now -- XBC099288 issued by 8 INA, or anyone else for that matter?</p> <p>9 A. In Exhibit-17?</p> <p>10 Q. Yes.</p> <p>11 MR. BRENNAN: Objection.</p> <p>12 A. No.</p> <p>13 BY-MR.FOX:</p> <p>14 Q. Okay. And Exhibit-17, just so the 15 record is clear, is the work product of AIG, 16 right?</p> <p>17 A. That's right.</p> <p>18 Q. Okay. I'm finished with that 19 document.</p> <p>20 What evidence do you regard there to 21 be of the allegedly missing INA policy?</p> <p>22 MR. BRENNAN: Objection.</p> <p>23 A. When you say "there," where?</p> <p>24 BY-MR.FOX:</p> <p>25 Q. No, no. So I'm done with -- with</p>
Page 214	Page 216
<p>1 2 Exhibit-17 is, what's listed on Exhibit-C, 3 just to use a shorthand description, a policy 4 chart prepared by Insurance Archaeology Group?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Now, am I correct, that at 7 least according to Exhibit-17, Insurance 8 Archaeology Group was -- I know you more 9 colloquially refer to as AIG -- that 10 according to Exhibit-17, AIG does not agree 11 with you, that there is such an allegedly 12 missing INA policy?</p> <p>13 MR. BRENNAN: Object to the form.</p> <p>14 BY-MR.FOX:</p> <p>15 Q. Right?</p> <p>16 MR. BRENNAN: Object to the form.</p> <p>17 And just for the record, there is a 18 separate one that was produced in the same 19 package that refers to excess policies, so we 20 don't get up too far down the road to 21 nowhere.</p> <p>22 BY-MR.FOX:</p> <p>23 Q. So just -- again, with respect to 24 Exhibit-17, and if it helps, it's a six-page 25 document, beginning on page 5, the -- it's</p>	<p>1 2 17, if you're still on that.</p> <p>3 So just putting a fresh question to 4 you: What evidence do you regard there to 5 be of the allegedly missing INA policy?</p> <p>6 MR. BRENNAN: Objection.</p> <p>7 A. There's a letter to -- from INA to 8 Troy Belting dated December 18, '78, which 9 stated that, "We also had excess policy 10 XBC-199288 in effect on 11/11/74 with limits 11 of \$1 million."</p> <p>12 BY-MR.FOX:</p> <p>13 Q. Okay. Other than the December 18, 14 1978, letter that you just referred to, what, 15 if any, other evidence do you regard there 16 to be of this allegedly missing INA policy?</p> <p>17 A. Apparently, that's it.</p> <p>18 Q. Okay. And your expert report also 19 refers to a November 18, 1977, letter; is 20 that correct? And one -- at least one of 21 the references is on page 3, footnote 2.</p> <p>22 A. Oh, okay. On page 3, footnote?</p> <p>23 Q. On footnote 2, page 3.</p> <p>24 A. Oh, I'm sorry, yeah.</p> <p>25 Q. That's okay. And --</p>



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<p style="text-align: right;">Page 217</p> <p>1</p> <p>2 A. Right, there's the Allen Decker</p> <p>3 letter of 1/18/77 and the Larry Holweger</p> <p>4 letter of February 8, '78.</p> <p>5 Q. Okay. So just to -- just to go</p> <p>6 through them one by one. So I think you</p> <p>7 said 1/18/77, and I, actually, think there's</p> <p>8 a -- shouldn't it be 11/18/77?</p> <p>9 A. 11/18/77.</p> <p>10 Q. Okay. And as to the other reference</p> <p>11 in that footnote, I don't know that I can --</p> <p>12 I think that may be specific to St. Paul.</p> <p>13 So I --</p> <p>14 A. Oh, that's right. That's right.</p> <p>15 Q. Okay. So you've identified now two</p> <p>16 letters, the December 18, 1978, letter and</p> <p>17 the November 18, 1977, letter. Other than</p> <p>18 those two letters, do you regard there to be</p> <p>19 any evidence of the missing -- sorry -- the</p> <p>20 allegedly missing INA policy?</p> <p>21 A. Of the existence of the policy?</p> <p>22 Q. Well -- yeah.</p> <p>23 A. No, I don't.</p> <p>24 Q. Okay. Now, there's been some</p> <p>25 discussion of William Field. You -- you</p>	<p style="text-align: right;">Page 219</p> <p>1</p> <p>2 Q. Okay. Did you see anything in your</p> <p>3 review of Mr. Field's deposition transcript</p> <p>4 that gave you any indication at all that the</p> <p>5 allegedly missing INA policy existed?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Okay. Is there anything else on</p> <p>8 Exhibit-C, other than what you have testified</p> <p>9 to during my questioning of you, that leads</p> <p>10 you to believe that the allegedly INA missing</p> <p>11 policy existed?</p> <p>12 MR. BRENNAN: Objection.</p> <p>13 A. I don't think so.</p> <p>14 MR. FOX: I want to ask the court</p> <p>15 reporter to mark as Exhibit-22 a copy of --</p> <p>16 actually, 22 and 23, if you could do this at</p> <p>17 once -- a copy of the two letters that you</p> <p>18 just referred to, the first dated November</p> <p>19 18, 1977, and the second dated December 18,</p> <p>20 1978.</p> <p>21 MS. YOUNG: These?</p> <p>22 MR. FOX: This is my pile?</p> <p>23 MS. YOUNG: No, I was going to have</p> <p>24 those marked, and he was kind enough to give</p> <p>25 me his extras. So you can mark those if</p>
<p style="text-align: right;">Page 218</p> <p>1</p> <p>2 testified just a short while ago that he</p> <p>3 worked for INA, and you testified a short</p> <p>4 while ago that you thought he dotted all the</p> <p>5 Is and crossed all the Ts; is that --</p> <p>6 A. Right. And we were talking about</p> <p>7 him in the context of the Pennell matter,</p> <p>8 which he was investigating on behalf of INA,</p> <p>9 but also was keeping in constant contact with</p> <p>10 Jamestown, with -- with Unigard.</p> <p>11 Q. Okay. And is it fair to say that</p> <p>12 Mr. Field -- actually, withdraw that.</p> <p>13 Mr. Field was deposed in this case,</p> <p>14 and you've reviewed the transcript of his</p> <p>15 deposition and all the exhibits that</p> <p>16 accompany that, right?</p> <p>17 A. I have.</p> <p>18 Q. Okay. And that's the third listing</p> <p>19 on Exhibit-C. Is it -- is it fair to say</p> <p>20 that Mr. Field was closer to the issue of</p> <p>21 what policies INA may have issued than you</p> <p>22 are?</p> <p>23 A. Sure.</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 BY-MR.FOX:</p>	<p style="text-align: right;">Page 220</p> <p>1</p> <p>2 you want.</p> <p>3 MR. FOX: Appreciate it.</p> <p>4 Go off the record for a second.</p> <p>5 (Whereupon, Exhibit Number-22 and</p> <p>6 Number-23 marked.)</p> <p>7 (Whereupon, break taken, 3:41 p.m. to</p> <p>8 3:48 p.m.)</p> <p>9 BY-MR.FOX:</p> <p>10 Q. We're back on. We just took care</p> <p>11 of some paperwork during the brief break.</p> <p>12 So, Mr. Hughes, I have asked the</p> <p>13 court reporter to hand you what has now been</p> <p>14 -- two exhibits, two one-page exhibits of</p> <p>15 which I've asked the court reporter to hand</p> <p>16 to you, Exhibit-22, Hughes 22, which is dated</p> <p>17 November 18, 1977, and Hughes 23, which is</p> <p>18 dated December 18, 1978.</p> <p>19 So -- and the Exhibit-22, Mr.</p> <p>20 Hughes, that's -- that's written to Mr.</p> <p>21 Field; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. And Exhibit-23, that's from Mr.</p> <p>24 Field, right?</p> <p>25 A. Correct.</p>



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<p style="text-align: right;">Page 221</p> <p>1</p> <p>2 Q. Okay. And is there -- is there any</p> <p>3 reference -- withdrawn.</p> <p>4 Mr. Hughes, you've testified that as</p> <p>5 indicated on Exhibit-C to your expert report,</p> <p>6 that you reviewed the transcript of William</p> <p>7 Field which -- with its exhibits. Is there</p> <p>8 any reference to Mr. Field's deposition</p> <p>9 testimony in this case that you included in</p> <p>10 your expert report?</p> <p>11 MR. BRENNAN: Object to form.</p> <p>12 A. I don't remember. I don't think so.</p> <p>13 BY-MR.FOX:</p> <p>14 Q. Okay. I don't think so either.</p> <p>15 And Mr. Field, during his deposition,</p> <p>16 he said nothing about any excess coverage</p> <p>17 allegedly issued by INA; is that correct?</p> <p>18 MR. BRENNAN: Object to form.</p> <p>19 A. Not that I recall.</p> <p>20 BY-MR.FOX:</p> <p>21 Q. Okay. Let me -- actually, keep the</p> <p>22 -- Exhibit-23 in front of you, please. And</p> <p>23 if I could ask you to refer to page 8 of</p> <p>24 your expert report. And just read aloud,</p> <p>25 please, the bottom sentence on page 8 of</p>	<p style="text-align: right;">Page 223</p> <p>1</p> <p>2 Please take a look at page 15 of</p> <p>3 your expert report, the very top. You write</p> <p>4 that, "I have attached redacted copies of</p> <p>5 actual umbrella policies issued by INA, St.</p> <p>6 Paul and Continental as Exhibit-F." Is that</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. So I'm not going to ask you any</p> <p>10 questions about St. Paul and Continental. So</p> <p>11 I would like to focus on the -- after the</p> <p>12 cover sheet, which says "Exhibit-F," I want</p> <p>13 to just focus on the first five pages.</p> <p>14 A. Okay.</p> <p>15 Q. Okay. So with respect to the</p> <p>16 portion of the expert report I just read to</p> <p>17 you from the top of page 15, am I correct,</p> <p>18 that this is -- this is what you attached as</p> <p>19 a redacted copy of, just to use your</p> <p>20 language, an actual umbrella policy issued by</p> <p>21 INA; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. How did you obtain that</p> <p>24 portion of Exhibit-F?</p> <p>25 A. This is an actual policy from one of</p>
<p style="text-align: right;">Page 222</p> <p>1</p> <p>2 Exhibit-1, your expert report?</p> <p>3 A. Which -- which sentence?</p> <p>4 Q. The one all the way at the bottom</p> <p>5 that begins with "INA."</p> <p>6 A. Oh. "INA, in a letter Troy Belting</p> <p>7 dated 12/18/78, stated, 'We also had excess</p> <p>8 policy XBC199288 in effect on 11/11/74 with</p> <p>9 limits of 1 million.'"</p> <p>10 Q. Okay. Now, just -- I'm not trying</p> <p>11 to trap you here, Mr. Hughes, but there is</p> <p>12 an error in that -- in your expert report,</p> <p>13 am I correct, in that it refers to a policy</p> <p>14 number -- a policy with the number --</p> <p>15 A. Oh, yes, I'm sorry.</p> <p>16 Q. -- 199288, and you're referencing</p> <p>17 Exhibit-23 in which the number is 09288?</p> <p>18 A. That's absolutely correct.</p> <p>19 Q. Okay. And that's just a -- that's</p> <p>20 just a minor mistake.</p> <p>21 A. Right. Thank you.</p> <p>22 Q. Okay. Let me ask you to turn your</p> <p>23 attention to Exhibit-F of your expert report.</p> <p>24 Let me just first ask you to -- well, let</p> <p>25 me -- let's do it this way.</p>	<p style="text-align: right;">Page 224</p> <p>1</p> <p>2 my clients that they provided to us with the</p> <p>3 permission to use it on a redacted basis.</p> <p>4 Q. Okay. And who is the client?</p> <p>5 A. I don't know.</p> <p>6 MR. BRENNAN: Objection.</p> <p>7 BY-MR.FOX:</p> <p>8 Q. What type of business was that</p> <p>9 client involved in?</p> <p>10 A. I don't know.</p> <p>11 Q. Was it, for example, an explosives</p> <p>12 manufacturer?</p> <p>13 A. I have no idea.</p> <p>14 Q. It could have been, for all you</p> <p>15 know, right?</p> <p>16 A. Could have been.</p> <p>17 Q. And what time period is the -- what</p> <p>18 you -- what you have represented is an</p> <p>19 actual umbrella policy issued by INA, what</p> <p>20 time -- what time period is that?</p> <p>21 A. February 1, '71 to '72.</p> <p>22 Q. Okay. And then that's a different</p> <p>23 time period, isn't it, from when you say the</p> <p>24 allegedly missing INA policy in this case was</p> <p>25 issued?</p>



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1

2 A. Yes, it is.

3 Q. And that was -- in this case, that

4 was allegedly issued from October 3, 1974 to

5 October 3, 1975, right?

6 A. Yes.

7 Q. And -- and is it your belief that

8 -- excuse me -- because the -- what you have

9 represented as an umbrella policy issued by

10 INA that's attached to Exhibit-F, because

11 that's -- that has the XBC prefix and that,

12 according to you, the allegedly missing INA

13 policy also has an XBC prefix, that the

14 terms of the XBC allegedly missing policy in

15 this case would be identical to the -- the

16 terms and conditions in the -- in what's

17 Exhibit-F?

18 A. In the preprinted form, yes.

19 Q. Okay. Is it -- is it your opinion

20 in this case that whenever INA issued an

21 insurance policy with the prefix XBC, that it

22 was in the exact form as in Exhibit-F?

23 MR. BRENNAN: Objection.

24 A. I don't know. I wouldn't say

25 whenever. If you're talking about the late

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1

2 '80s or 1990s, it may have been different.

3 I would have to check to see. But as far

4 as this particular period of time is

5 concerned, I don't believe there was any from

6 the 19 -- the early 1970s to the latter part

7 of the 1970s in the -- in the structure of

8 the -- of the XBC forms.

9 BY-MR.FOX:

10 Q. Do you consider yourself to be an

11 expert on INA policy forms?

12 A. To a certain extent, yes.

13 Q. Oh, okay. What is that belief based

14 upon? Please tell me everything that that --

15 that that belief that you're an expert on

16 INA policy forms, tell me everything that's

17 based on.

18 MR. BRENNAN: Objection.

19 A. Well, to the extent that the -- that

20 the term "expert," as I understand it, means

21 that you have -- possess the knowledge that

22 is -- that is broader and in excess of that

23 of the general public, I've dealt with INA

24 excess policies now for 50 years, have sold

25 a lot of them, have consulted about a lot of

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1

2 them, and now I've testified about a lot of

3 them. Probably hundreds of them. And have

4 learned a great deal about them, sufficient

5 to that, I believe, I can testify as an

6 expert, and I think I've been qualified as

7 an expert on INA policies in dozens of

8 courts.

9 BY-MR.FOX:

10 Q. You've testified about hundreds of

11 XBC policies?

12 A. No, but I said dozens of them. I

13 said I've dealt with hundreds of them over a

14 period of time, if not at least hundreds.

15 Q. When did INA -- excuse me. When

16 did INA begin?

17 A. When did INA begin?

18 Q. When did Insurance Company of North

19 America begin operating as an insurance

20 company?

21 A. I have no idea sitting here.

22 Q. Can you tell me what century?

23 A. I'm sorry?

24 Q. Can you tell me in what century it

25 began operating?

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1

2 MR. BRENNAN: Objection.

3 A. Not sitting here for this moment,

4 no.

5 BY-MR.FOX:

6 Q. I mean, you don't know if it started

7 in the 18th Century or 19th Century or 20th

8 Century?

9 A. No, I can't tell you that today, no.

10 Q. When did INA first issue a policy

11 with the XBC prefix?

12 A. I don't know.

13 Q. Can you tell me if it was in the

14 20th Century or the 19th Century?

15 A. It would have likely been in the

16 20th Century because INA didn't begin issuing

17 umbrella policies until, oh, the 1950s.

18 Q. It's -- do you consider what you --

19 excuse me -- what you attached as Exhibit-F

20 as a -- as an umbrella form?

21 A. Yes.

22 Q. And what is that based on?

23 A. I'm sorry, what?

24 Q. And what is that based on? What is

25 that belief based on?



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<p style="text-align: right;">Page 229</p> <p>1</p> <p>2 A. Well, the structure of the policy.</p> <p>3 Q. In what way do you -- does the</p> <p>4 structure of the policy lead you to believe</p> <p>5 that it's an umbrella form?</p> <p>6 A. In the first place, the general</p> <p>7 structure of the policy I know to be an INA</p> <p>8 umbrella form; however, if you look at the</p> <p>9 -- it's difficult to cite these. The first</p> <p>10 page, below the first line that says,</p> <p>11 "Coverage A, Personal Injury Liability," if</p> <p>12 you will scroll down to about -- a little</p> <p>13 over halfway in that paragraph, it says, "If</p> <p>14 limits of liability of the underlying</p> <p>15 insurance are exhausted because of personal</p> <p>16 injury, property damage or advertising</p> <p>17 injury," well, there wouldn't be underlying</p> <p>18 limits if it were not an umbrella policy.</p> <p>19 And it also says that in the event</p> <p>20 of the exhaustion of the underlying limits,</p> <p>21 INA will have the right and duty to defend.</p> <p>22 That's typical of an umbrella policy and not</p> <p>23 an excess liability policy.</p> <p>24 Q. In your view, what -- what is an</p> <p>25 umbrella policy?</p>	<p style="text-align: right;">Page 231</p> <p>1</p> <p>2 those things around in my head.</p> <p>3 BY-MR.FOX:</p> <p>4 Q. But you do regard yourself to be an</p> <p>5 expert?</p> <p>6 A. Absolutely. But experts don't</p> <p>7 necessarily carry all the information that</p> <p>8 they're being asked to testify about around</p> <p>9 in their heads.</p> <p>10 Q. Okay. Well, will you be opining in</p> <p>11 this case as to the -- the policy forms that</p> <p>12 INA issued at various times?</p> <p>13 A. I don't think so.</p> <p>14 Q. Okay. The policy language in the</p> <p>15 INA XBC form that's attached to your Exhibit-</p> <p>16 F, when did INA begin using this policy</p> <p>17 form?</p> <p>18 MR. BRENNAN: Objection.</p> <p>19 A. It's my belief that they begin using</p> <p>20 this policy form sometime around in the</p> <p>21 1960s.</p> <p>22 By the way, this policy, as you will</p> <p>23 see, is entitled, "Excess Blanket Catastrophe</p> <p>24 Liability Policy," which is why it has a</p> <p>25 policy prefix "XBC."</p>
<p style="text-align: right;">Page 230</p> <p>1</p> <p>2 A. An umbrella policy is an excess</p> <p>3 liability policy that -- that provides limits</p> <p>4 in excess of the underlying liability</p> <p>5 policies and has the potential for providing</p> <p>6 broader coverages than the underlying in</p> <p>7 cases where there is coverage in the</p> <p>8 underlying but not coverage -- sorry -- there</p> <p>9 is coverage in the umbrella but not coverage</p> <p>10 in the underlying. And in that second case,</p> <p>11 you have coverage either excess of the</p> <p>12 exhausted limits or excess of the retained</p> <p>13 limit, which is listed on the first page of</p> <p>14 the policy. In this case, \$10,000.</p> <p>15 Q. You've -- you've stated -- you've</p> <p>16 testified just a short while ago, I believe,</p> <p>17 Mr. Hughes, that in your -- in your view,</p> <p>18 the INA XBC policy form, it contained the</p> <p>19 identical language until sometime -- year to</p> <p>20 year until sometime in the 1980s. Is that</p> <p>21 right?</p> <p>22 MR. BRENNAN: Objection.</p> <p>23 A. I told you that I sitting here</p> <p>24 today, that that was likely. I can't tell</p> <p>25 you that for sure. I mean, I don't carry</p>	<p style="text-align: right;">Page 232</p> <p>1</p> <p>2 BY-MR.FOX:</p> <p>3 Q. Okay. And Exhibit-F, with respect</p> <p>4 to INA, that -- that's not a policy issued</p> <p>5 to -- to Troy Belting, is it?</p> <p>6 A. No, it isn't.</p> <p>7 Q. Let me ask you to turn back to your</p> <p>8 expert report and page 4 of that, please.</p> <p>9 And let me know when you're there.</p> <p>10 A. Okay.</p> <p>11 Q. Are you there?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay. And one I want to first</p> <p>14 direct your attention to in that final</p> <p>15 paragraph -- and, again, I'm not interested</p> <p>16 in the -- in the other carriers, that's why</p> <p>17 I'm going to skip over them.</p> <p>18 (As read:) It is my professional</p> <p>19 opinion, that without a doubt, the terms and</p> <p>20 conditions of the excess liability policies</p> <p>21 issue -- perhaps that should be "issued."</p> <p>22 A. It should. Yes, it should.</p> <p>23 Q. -- to Troy Belting by -- I'm going</p> <p>24 to skip over the others -- INA, provided</p> <p>25 that the excess policy would at least follow</p>



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1 the terms and conditions of the underlying
2 policies.
3
4 I know there's more to the sentence,
5 but I'm going to stop it there. Did I read
6 that correctly, acknowledging that I left the
7 other carriers out?
8 A. Yes, you did.
9 Q. Okay. Is it your belief that the
10 allegedly missing INA policy -- I'm sorry.
11 Withdrawn.
12 And I showed you earlier, and Mr.
13 Kotula showed you before then, Exhibit-16,
14 which relates to a primary policy issued by
15 Pacific Employers during -- during that same
16 period of time. Is that correct?
17 A. You showed me that, did you say?
18 Q. I showed it to you, the Exhibit-16?
19 A. Yes.
20 Q. Okay. Is it -- is it your opinion
21 that the allegedly missing INA policy
22 followed the terms and conditions of
23 Exhibit-16?
24 A. What I said in the report was that
25 it at least followed the terms and conditions

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1 of the underlying policies; in other words,
2 they would not be narrower than the
3 underlying policies. And, yes, that is my
4 opinion.
5
6 Q. And other than the -- the policy
7 form that's in Exhibit-F, what's the basis
8 for your belief that the allegedly missing
9 INA excess policy would at least follow the
10 terms of Exhibit-16?
11 MR. BRENNAN: Objection.
12 BY-MR.FOX:
13 Q. Terms and conditions.
14 A. (Reviews document.)
15 If you look on the -- I'm sorry,
16 there's no Bates numbers on these pages. It
17 would be the -- it would be the page
18 following the insuring agreement page.
19 Q. So which exhibit are you on?
20 A. I'm on the Exhibit-F with the
21 Pacific -- the INA sample.
22 Q. Okay. So you're -- you're going to
23 answer by referring me to Exhibit-F?
24 A. Yeah. Was your question as to why
25 I said that it would at least follow the --

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1 the terms and conditions of the underlying?
2
3 Q. Right. So I -- let me restate my
4 question, or at least what I intended my
5 question to be.
6 Other than referring to Exhibit-F --
7 MR. FOX: Well, actually, would you
8 -- would you mind reading back my last
9 question?
10 THE WITNESS: She'll whisper it
11 back.
12 COURT REPORTER: "And other than the
13 -- the policy form that's in Exhibit-F,
14 what's the basis for your belief that the
15 allegedly missing INA excess policy would at
16 least follow the terms of Exhibit-16?"
17 THE WITNESS: Sorry, I didn't
18 realize you said --
19 BY-MR.FOX:
20 Q. That's okay.
21 A. -- other than the Exhibit-F.
22 Q. Is there -- is there anything other
23 than Exhibit-F, or does Exhibit-F provide
24 this whole basis?
25 A. My experience from having my clients

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1 purchase these policies over the years,
2 there's -- there's no way we would have
3 allowed our clients to purchase an umbrella
4 policy which didn't at least follow form to
5 the underlying policies. And I know that we
6 -- INA was one of our favorite companies.
7 We liked the coverage that they provide, and
8 we liked the way they handled their claims.
9
10 Q. Okay. If you were placing coverage,
11 let's say in the 1970s, for an explosives
12 manufacturer and you were placing excessive
13 coverage, would you try to get -- would the
14 -- would the terms and conditions that you
15 would try to get for your client be any
16 different versus, say, a manufacturer of
17 widgets?
18 MR. BRENNAN: Objection.
19 A. Well, the way you structured your --
20 your question is would -- would it be what I
21 was trying to get for my client any
22 different? No, it wouldn't be.
23 But, in fact, I think what you're
24 really referring to is would the availability
25 be different. Could you buy the same excess



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<p>1 liability coverage for an explosives</p> <p>2 manufacturing firm that you could for a</p> <p>3 widget manufacturer, and the answer is</p> <p>4 probably you could buy the same coverage in</p> <p>5 terms of wording, policy wordings, but it</p> <p>6 would have to attach at a lot higher point.</p> <p>7 And as a matter of fact, one of our</p> <p>8 clients for many years was Atlas, which was</p> <p>9 one of the largest explosive manufacturing</p> <p>10 firms in the country -- or in the world, and</p> <p>11 they had their own captive insurance company</p> <p>12 that wrote the first \$5 million worth of</p> <p>13 coverage because there was not any coverage</p> <p>14 available to them in the general marketplace</p> <p>15 for their primary coverage.</p> <p>16 Is that what you were referring to?</p> <p>17 BY-MR.FOX:</p> <p>18 Q. That's fine. But if -- is it your</p> <p>19 testimony that the -- actually, withdrawn.</p> <p>20 Is it your testimony that the same</p> <p>21 terms and conditions -- putting limits aside</p> <p>22 for the moment -- the same terms and</p> <p>23 conditions of excess coverage during the</p> <p>24 1970s would have been available to an</p> <p>25</p>	<p>1 A. Yes.</p> <p>2 Q. And then if you flip over to page</p> <p>3 9, the last paragraph before "Insurance</p> <p>4 Company/Agent Records," it says, "The November</p> <p>5 18, 1977, letter from Troy Belting to INA</p> <p>6 listed all of the excess policies, one of</p> <p>7 which was the Continental policy."</p> <p>8 A. Right.</p> <p>9 Q. Was that November 18th, 1977, letter,</p> <p>10 which, I think, has been marked as</p> <p>11 Exhibit-22, was that the only form of -- was</p> <p>12 that the only evidence that you have seen</p> <p>13 that mentions this Continental -- this</p> <p>14 alleged Continental excess policy?</p> <p>15 A. I think so.</p> <p>16 MR. BRENNAN: Objection.</p> <p>17 THE WITNESS: Sorry. Excuse me.</p> <p>18 MR. BRENNAN: Go ahead.</p> <p>19 A. I think that's right.</p> <p>20 BY-MS.YOUNG:</p> <p>21 Q. Okay. And looking at Exhibit-22,</p> <p>22 which is the letter dated November 18th,</p> <p>23 1977, it's on -- it's authored by Allen E.</p> <p>24 Decker, vice president of Troy Belting, and</p> <p>25</p>
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<p>1 explosives manufacturer versus a manufacturer</p> <p>2 of paperclips?</p> <p>3 MR. BRENNAN: Objection.</p> <p>4 A. Sure. Except that the attachment</p> <p>5 point would be different.</p> <p>6 MR. FOX: I have no further</p> <p>7 questions at this time.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 EXAMINATION</p> <p>10 BY-MS.YOUNG:</p> <p>11 Q. I'll try to be quick. I represent</p> <p>12 Continental, just so you know.</p> <p>13 Going to page 3 of your report in</p> <p>14 this action, Hughes Exhibit-1, on page 3 --</p> <p>15 A. Yes.</p> <p>16 Q. -- one of your opinions is that, "It</p> <p>17 is my further professional opinion that, with</p> <p>18 little doubt, Continental Casualty Company</p> <p>19 issued Policy Number 293-38-68 for the period</p> <p>20 from 1/21/77 to 11/1/78, and more likely than</p> <p>21 not the actual policy number is RDU 2933868."</p> <p>22 Now, flipping to page -- I guess</p> <p>23 it's on page 7. It starts with,</p> <p>24 "Policyholder records."</p> <p>25</p>	<p>1 it's addressed to William Field at Insurance</p> <p>2 Company of North America. Do you know where</p> <p>3 the information came from that's contained in</p> <p>4 this letter?</p> <p>5 A. I do not.</p> <p>6 Q. Okay. Did you ever have any</p> <p>7 discussions with Allen Decker regarding the</p> <p>8 substance of this letter?</p> <p>9 A. No. I don't even know whether he's</p> <p>10 alive or not.</p> <p>11 Q. Okay. Have you ever had any</p> <p>12 conversations with anyone at Troy Belting who</p> <p>13 has personal knowledge of the existence of</p> <p>14 this alleged Continental policy?</p> <p>15 A. I do not. No, I haven't.</p> <p>16 Q. Have you ever had any conversations</p> <p>17 with anyone at Troy Belting who -- whose</p> <p>18 ever indicated that they have seen this</p> <p>19 alleged Continental policy?</p> <p>20 A. No.</p> <p>21 Q. And have you, yourself, ever seen</p> <p>22 the alleged Continental policy?</p> <p>23 A. No.</p> <p>24 Q. Okay. So going back to your report,</p> <p>25</p>



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<p style="text-align: right;">Page 241</p> <p>1 on page 7, under "Policyholder Records," the</p> <p>2 second sentence, "Also relevant are invoices,</p> <p>3 coverage and renewal summaries, certificates</p> <p>4 of insurance and other records in the</p> <p>5 policyholder's possession that reference</p> <p>6 insurance."</p> <p>7</p> <p>8 Did you happen to see any of these</p> <p>9 kinds of documents that are referred to here</p> <p>10 that mention the alleged Continental policy?</p> <p>11 A. No. And I thought you had asked me</p> <p>12 earlier if this letter was the only reference</p> <p>13 that I had seen, and that is the only</p> <p>14 reference I have seen.</p> <p>15 Q. Correct. Great.</p> <p>16 Okay. Now, going to -- we're still</p> <p>17 in your report. Okay. So on page 4 of</p> <p>18 your report --</p> <p>19 A. Okay.</p> <p>20 Q. -- the last paragraph where you say</p> <p>21 it's your professional opinion, without a</p> <p>22 doubt, that the terms and conditions of the</p> <p>23 excess liability policy, including the</p> <p>24 Continental one, provided that the policy</p> <p>25 would at least follow the terms and</p>	<p style="text-align: right;">Page 243</p> <p>1</p> <p>2 A. No. If you look in the second</p> <p>3 paragraph. It's not really a new paragraph.</p> <p>4 You see where it has in bold, "Personal</p> <p>5 Injury, Property Damage"?</p> <p>6 Q. Correct. Oh, okay. The first full</p> <p>7 sentence there?</p> <p>8 A. Right. And it starts, "The company,</p> <p>9 with respect to an occurrence not covered --</p> <p>10 "</p> <p>11 Q. Okay. So are you including -- so</p> <p>12 where it says with respect to an -- to an</p> <p>13 occurrence not covered in whole or in part</p> <p>14 by underlying insurance or to which there's</p> <p>15 no other insurance in any way applicable, do</p> <p>16 you take that to mean that that includes</p> <p>17 when underlying insurance is exhausted?</p> <p>18 A. Not in this particular paragraph.</p> <p>19 Let me -- let me find that.</p> <p>20 (Whereupon, reviews document.)</p> <p>21 I take it back. I think that does</p> <p>22 -- that does include exhaustion. In other</p> <p>23 words, the terms -- the term "not covered in</p> <p>24 whole or in part or to which there is no</p> <p>25 other insurance in any way applicable," would</p>
<p style="text-align: right;">Page 242</p> <p>1 conditions of the underlying policies, do you</p> <p>2 mean for that to include the duty to defend?</p> <p>3 A. Only if the underlying policies were</p> <p>4 exhausted.</p> <p>5 Q. Okay. So if -- I'll direct you now</p> <p>6 to Exhibit-F of your report, specifically the</p> <p>7 exemplar Continental policy. Can you tell me</p> <p>8 where, if anywhere, in this exemplar policy</p> <p>9 it states that Continental would have a duty</p> <p>10 to defend if the underlying insurance was</p> <p>11 exhausted?</p> <p>12 A. Yes, it's in Section 2, Coverage B.</p> <p>13 It would be the paragraph underneath the</p> <p>14 listing of the lines of coverage where it</p> <p>15 says, "The company, with respect to an</p> <p>16 occurrence, not covered in whole or in part</p> <p>17 by underlying insurance or to which there is</p> <p>18 no other insurance in any way applicable,</p> <p>19 shall have the right and duty to defend any</p> <p>20 suit against the insured seeking damages on</p> <p>21 account of such personal injury," et cetera.</p> <p>22 Q. I have lost you. Coverage B, Number</p> <p>23 2. Is that the first sentence you're</p> <p>24 looking at?</p> <p>25</p>	<p style="text-align: right;">Page 244</p> <p>1 have --</p> <p>2 BY-MS.YOUNG:</p> <p>3 Q. You would state that -- you would</p> <p>4 interpret that to mean --</p> <p>5 A. Exhaustion.</p> <p>6 Q. -- to include exhaustion?</p> <p>7 A. Right.</p> <p>8 Q. Okay. Is it possible that that part</p> <p>9 of your report could have been referencing</p> <p>10 the INA or the St. Paul exemplar excess</p> <p>11 policies that you were referring to?</p> <p>12 MR. BRENNAN: Objection.</p> <p>13 A. Is it possible?</p> <p>14 BY-MS.YOUNG:</p> <p>15 Q. Right. That your report was meant</p> <p>16 -- that that portion of the report was meant</p> <p>17 to speak to those policies?</p> <p>18 MR. BRENNAN: Which portion?</p> <p>19 BY-MS.YOUNG:</p> <p>20 Q. The duty to defend in the event the</p> <p>21 underlying insurance is exhausted?</p> <p>22 MR. BRENNAN: Referring to where?</p> <p>23 I'm sorry, I'm just not looking --</p> <p>24 MS. YOUNG: On page 4, the last --</p> <p>25</p>



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<p>1 the last full sentence on page 4.</p> <p>2 MR. BRENNAN: Same objection, to</p> <p>3 form.</p> <p>4 A. I don't believe it was intended to</p> <p>5 -- to apply only to those two.</p> <p>6 BY-MS.YOUNG:</p> <p>7 Q. Okay. Now, looking at this exemplar</p> <p>8 policy, where did you get that from?</p> <p>9 A. From my files. It was a policy</p> <p>10 that was purchased by one of my clients.</p> <p>11 Q. Okay. Okay. In your report, page</p> <p>12 15 -- at the bottom of page 15 you say,</p> <p>13 "During the relevant period of this report,</p> <p>14 i.e. 1968 to 1974, CNA Financial operated a</p> <p>15 number of companies that were capable of</p> <p>16 issuing umbrella policies."</p> <p>17 This -- but in -- it's been your</p> <p>18 opinion that Continental issued a policy that</p> <p>19 was in effect from January 21st, 1977 to</p> <p>20 November 1st, 1978.</p> <p>21 MR. BRENNAN: If you want to ask</p> <p>22 the question, I'm suggesting --</p> <p>23 MS. YOUNG: I'm sorry?</p> <p>24 MR. BRENNAN: If you want to ask a</p> <p>25</p>	<p>1 Bates-stamped documents that you -- that you</p> <p>2 refer to, are they included in your report</p> <p>3 as an exhibit?</p> <p>4 A. They certainly should have been.</p> <p>5 Are they not here?</p> <p>6 Q. Not that I saw.</p> <p>7 A. My bad.</p> <p>8 Q. And so I want to ask you then to</p> <p>9 look at your report in Montello, which was</p> <p>10 marked as Exhibit-2.</p> <p>11 MR. KOTULA: I had the foresight to</p> <p>12 mark this.</p> <p>13 A. Got it.</p> <p>14 BY-MS.YOUNG:</p> <p>15 Q. Okay. If you look at page 12 of</p> <p>16 the Montello report --</p> <p>17 A. Right.</p> <p>18 Q. -- at the very top of the page, it</p> <p>19 says, "CNA filings with Oklahoma State Board</p> <p>20 dated August 5th, 1968, November 26, 1969,</p> <p>21 and August 26, 1971, Bates stamped 000122 -</p> <p>22 000137."</p> <p>23 A. Obviously, those are the forms.</p> <p>24 They were supposed to have been attached to</p> <p>25</p>
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<p>1 question, I suggest --</p> <p>2 MS. YOUNG: You mean the umbrella --</p> <p>3 MR. BRENNAN: -- that both sentences</p> <p>4 should be read in conjunction.</p> <p>5 MR. FOX: Okay. I've got you.</p> <p>6 BY-MS.YOUNG:</p> <p>7 Q. So from '68 to '74, you're stating</p> <p>8 that's the relevant period for this report?</p> <p>9 A. Well, that's a typographical error.</p> <p>10 Q. Okay. That's what I was getting at.</p> <p>11 A. Sorry about that.</p> <p>12 Q. Now, you also refer to on page 16,</p> <p>13 you refer to filings that are most pertinent</p> <p>14 to this matter which are represented by</p> <p>15 documents attached as Bates stamped</p> <p>16 000122-000137.</p> <p>17 A. Right.</p> <p>18 Q. "These filings involve the A, B and</p> <p>19 C iterations of CNA's umbrella excess</p> <p>20 third-party liability policy form G-40240.</p> <p>21 The form is characterized, among other</p> <p>22 things, by the use of the prefix RDU and the</p> <p>23 policy number."</p> <p>24 Can you tell me if -- where these</p> <p>25</p>	<p>1 this report.</p> <p>2 Q. Okay. So you were referring to</p> <p>3 these Oklahoma filings with respect to your</p> <p>4 report for this -- for the Troy Belting</p> <p>5 matter?</p> <p>6 A. Those weren't only Oklahoma filings.</p> <p>7 Those were filings that were made to all of</p> <p>8 the states, but it so happened that this</p> <p>9 particular case was an Oklahoma case.</p> <p>10 Montello was an Oklahoma case.</p> <p>11 Q. Okay.</p> <p>12 A. And so in other words, the filings</p> <p>13 were made with the -- the filings referred</p> <p>14 to in the Montello report were made to the</p> <p>15 Oklahoma board, but they were generic filings</p> <p>16 that were made to all the states' regulatory</p> <p>17 agencies.</p> <p>18 Q. Do you know that they were filed</p> <p>19 with the State of New York?</p> <p>20 A. Well, that's an interesting question.</p> <p>21 The State of New York walked across the</p> <p>22 regulatory environment of the United States,</p> <p>23 as far as insurance is concerned, like</p> <p>24 gargantuan. The State of New York took the</p> <p>25</p>



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<p style="text-align: right;">Page 249</p> <p>1 position that they would regulate insurance</p> <p>2 and they would regulate insurance in such a</p> <p>3 way that they would not only regulate</p> <p>4 insurance in the State of New York but they</p> <p>5 would also regulate insurance in all the</p> <p>6 other states by saying that if you don't</p> <p>7 practice insurance and do the -- in the way</p> <p>8 that we require in New York, you will not be</p> <p>9 able to write insurance in the State of New</p> <p>10 York.</p> <p>11 So what that caused was that the</p> <p>12 insurance companies for a long period of time</p> <p>13 had to have a company that would write</p> <p>14 insurance in New York and companies that</p> <p>15 would write insurance everywhere else. So</p> <p>16 that -- that changed, and I'm not exactly</p> <p>17 sure when it clanged, but it did change.</p> <p>18 But the fact is, that New York has</p> <p>19 always had the tradition of very strong</p> <p>20 regulatory requirements. So if the filing</p> <p>21 was made in New York, you can be guaranteed</p> <p>22 that it was made -- the same filing was made</p> <p>23 in virtually all the other states that</p> <p>24 required prior approval.</p> <p>25</p>	<p style="text-align: right;">Page 251</p> <p>1 cetera.</p> <p>2 But -- so, no, I don't have any --</p> <p>3 any complete feedback from the State of New</p> <p>4 York about these particular forms.</p> <p>5 Q. Okay. How many exemplar CNA</p> <p>6 policies do you have in your library?</p> <p>7 A. Gosh, I don't know. Probably 50 or</p> <p>8 60.</p> <p>9 Q. Are they all -- what kinds of</p> <p>10 policies are they? Are they all different?</p> <p>11 A. They're all liability policies, and</p> <p>12 they're either primary policies or excess</p> <p>13 policies.</p> <p>14 Q. Okay. And do you know how many are</p> <p>15 excess?</p> <p>16 A. Probably most of them because there's</p> <p>17 really not any need to maintain exemplar</p> <p>18 policies for the primary policies because</p> <p>19 they were all standardized language.</p> <p>20 Q. Now, this particular exemplar policy</p> <p>21 that's been included with your Troy Belting</p> <p>22 report indicates that the policy period was</p> <p>23 November 30th, 1969 to November 30th, 1972.</p> <p>24 So that's about -- so that policy expired</p> <p>25</p>
<p style="text-align: right;">Page 250</p> <p>1 Q. Okay. Do you have any personal</p> <p>2 knowledge as to whether those form -- these</p> <p>3 forms were filed with the State of New York?</p> <p>4 MR. BRENNAN: Objection.</p> <p>5 A. I do not.</p> <p>6 BY-MS.YOUNG:</p> <p>7 Q. Did you ever do any research or</p> <p>8 investigation to determine whether these forms</p> <p>9 were filed in New York?</p> <p>10 A. In New York?</p> <p>11 MR. BRENNAN: Objection.</p> <p>12 BY-MS.YOUNG:</p> <p>13 Q. Correct.</p> <p>14 A. It's virtually impossible to do these</p> <p>15 days because the State of New York has</p> <p>16 expunged all their records back for a certain</p> <p>17 period of time. So they can't really tell</p> <p>18 you whether a particular form was filed in</p> <p>19 the state, at least the regulatory</p> <p>20 authorities can't. So you have to -- you</p> <p>21 have to find that information in other</p> <p>22 places. And it's just -- you have to be</p> <p>23 lucky enough to find a policy that uses a</p> <p>24 form that was written in New York, et</p> <p>25</p>	<p style="text-align: right;">Page 252</p> <p>1 approximately five years prior to when you</p> <p>2 contend that the alleged Continental policy</p> <p>3 was issued. Is there a reason why you use</p> <p>4 an exemplar policy from a different policy</p> <p>5 period?</p> <p>6 A. It's because it was available. But</p> <p>7 the policy terms in excess policies didn't</p> <p>8 change to any great degree between 1966 and</p> <p>9 1980.</p> <p>10 Q. Okay. But they -- is it your</p> <p>11 understanding that they did change?</p> <p>12 MR. BRENNAN: Objection.</p> <p>13 A. Some of them did. I can't tell you</p> <p>14 sitting here today which ones did and which</p> <p>15 ones did not.</p> <p>16 BY-MS.YOUNG:</p> <p>17 Q. Okay. So you don't know whether the</p> <p>18 Continental excess policies may or may not</p> <p>19 have changed in some way?</p> <p>20 A. No. Some insurance companies are</p> <p>21 still using the same umbrella form that they</p> <p>22 used for 50 years. So -- or not 50 years</p> <p>23 but since the 1950s.</p> <p>24 Q. And do you know if this exemplar --</p> <p>25</p>



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<p>1 2 do you know what state this exemplar policy 3 was issued in? 4 A. Not sitting here today, no. 5 Q. And do you know whether there were 6 any endorsements that were available that 7 would have limited or expanded coverage under 8 this exemplar policy? 9 A. I'm sure there were. 10 Q. There -- that are not included in 11 this particular policy? 12 A. The policy or the exemplar? 13 Q. The exemplar. 14 A. No, I didn't include any endorsements 15 because we don't know what endorsements might 16 have been included in the -- in the Troy 17 Belting policy. 18 Q. But there's a possibility that the 19 alleged Continental policy may have contained 20 endorsements if it existed? 21 A. There's always that possibility. 22 Q. And those endorsement may have 23 limited coverage, potentially? 24 A. They may have. It just all boils 25 down to who's -- who's responsible for</p>	<p>1 much higher excess limit policy, like, in 2 excess of \$5 million. 3 Q. The RDX form would have been? 4 A. Right. 5 Q. Do you know when -- is an RDU 6 prefix used for all types of excess policies? 7 Do you know? 8 A. No, it's just the umbrella layer. 9 RDU -- Continental used the RDU prefix for 10 policies in the umbrella layer, policies that 11 sat in direct excess of the underlying 12 primaries. 13 Q. And how is it -- was CNA the only 14 company that used the RDU prefix? Do you 15 know? 16 A. No, they weren't. Other companies 17 used it but not in the same way that CNA 18 did. 19 Q. And what was the difference that 20 other companies used it? 21 A. Well, some other companies used RDU 22 as a prefix for their primary policies. And 23 it's at least one other company. I can't 24 remember who it was, but we run into it 25</p>
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<p>1 proving that. 2 Q. Okay. Do you know if CNA used 3 other excess policy forms during this 4 particular time period, specifically 1977 to 5 1978? 6 A. Yes, they did, but they weren't XBC 7 forms. 8 Q. RDU? 9 A. I mean, RDU -- RDU forms. They had 10 -- they had RDX forms. 11 Q. Okay. What were the RDX forms? 12 A. They were essentially straight 13 following form excess policies. 14 Q. Okay. And how do you know -- how 15 is it your opinion that the Continental 16 policy was more likely than not an RDU -- 17 contained in RDU prefix as opposed to an RDX 18 prefix? 19 A. Because, A, its positioning in the 20 tower of coverage for this particular 21 insured, and, B, because it wouldn't have -- 22 it would not have been appropriate for Troy 23 Belting to purchase an RDX form at the -- at 24 the lower level. That would have been a</p>	<p>1 occasionally. 2 Q. Do you know if the RDU prefix is 3 still being used by the CNA companies? 4 A. I think it is, as a matter of fact. 5 Q. Do you know when CNA began using the 6 RDU prefix? 7 A. Not sitting here today. I mean, we 8 have that information in our files. 9 Q. Do you know when CNA started using 10 the RDX prefix? 11 A. No. I think it's about the same 12 time. 13 (Whereupon, Exhibit Number-24 marked.) 14 BY-MS.YOUNG: 15 Q. How many pages did I give you? 16 A. I'm going to dream about Montello 17 tonight. 18 MR. KOTULA: Or Trelleborg. 19 THE WITNESS: No, I didn't know 20 about Trelleborg. I'll have to find out 21 about that. 22 BY-MS.YOUNG: 23 Q. I just marked a couple of additional 24 pages from your deposition transcript in the 25</p>



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1
2 Montello case as Exhibit-24. Let's see.
3 Okay. So starting at the bottom of
4 page 41, you say, "Well, I don't know that
5 it couldn't have been something else
6 altogether because the RDU prefix was used by
7 Continental companies, it was used by
8 different Continental companies, and it was
9 used for various kinds of excess liability
10 policies."
11 What do you mean by that, "various
12 kinds of excess liability policies"? It
13 continues from the bottom of page 41
14 continuing to the top of 42.
15 A. I have no idea what I meant by
16 that.
17 Q. And then you say, "Not always -- it
18 was used for primary umbrella policies and
19 for excess umbrella policies. It was not
20 used by Continental companies for pure excess
21 or following form excess policies because
22 they used the prefix RDX."
23 So the RDU prefix was -- that was
24 used for both primary umbrella policies and
25 excess umbrella policies?

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1
2 A. Yes, if they were umbrella policies.
3 Q. Okay.
4 A. Meaning that they provided not only
5 extensive coverage -- you're shaking your
6 head as if you --
7 Q. No, go ahead. I don't mean to cut
8 you off.
9 A. Not only that they provided extended
10 limits on top of the underlying policies, but
11 they also provided terms and conditions that
12 were broader than the underlying policies,
13 which is the definition of an umbrella
14 policy.
15 Q. And then the question was put to you
16 that, "It's not your testimony, sitting here
17 today, that these are the only two policy
18 types that were ever used with an RDU
19 prefix?"
20 And your answer was, "No, it is
21 not."
22 And then two questions down, "There
23 may be others; you just don't know?"
24 Answer, "Right."
25 So the exemplar policy that was

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1
2 attached as an exhibit to your report in the
3 Troy Belting matter, how do you know that
4 this exemplar policy represents the same type
5 of policy that Continental had issued to Troy
6 Belting?
7 A. Well, I think you misinterpreted
8 something out of the Montello testimony.
9 What it says is, "Is it your testimony,
10 sitting here today, that these are the only
11 two policy types that were ever issued with
12 an RDU prefix?"
13 And I told you awhile ago that there
14 were other companies that used the RDU
15 prefix. So the answer is that -- no, but
16 it doesn't mean that that's not the case as
17 far as it pertains to Continental.
18 Q. Okay. Now, on page 68 of your
19 testimony, at line 20 --
20 A. Right.
21 Q. -- you say, "The only thing I can
22 tell you is that I've seen a lot of RDU
23 policies, and I can tell you that some of
24 them are umbrella forms, like Exhibit-E, and
25 some of them are umbrella forms, like

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1
2 Exhibit-D."
3 A. Right.
4 Q. So looking at your report in
5 Montello at the Exhibits-D and E --
6 A. I don't have that. Do I have those
7 exhibits?
8 Q. I believe so. It's been marked as
9 Exhibit-2.
10 A. I guess I do have those.
11 Q. Yeah.
12 MR. KOTULA: Yes, once again, I
13 thought ahead.
14 BY-MS.YOUNG:
15 Q. So looking at Exhibits-D and E in
16 the Montello report, those are two different
17 types of excess umbrella policies that both
18 use the RDU prefix?
19 A. There was slight differences between
20 the two. And this first -- I apologize for
21 the -- the quality of the copy in the first
22 one.
23 The earlier one, which was GO --
24 G40240A, and the second one was G40241A, and
25 if you notice that the cover letter that was



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<p>1 provided to the State Board of Oklahoma said</p> <p>2 that the, "Changes from the earlier edition</p> <p>3 are in the nature of corrections and</p> <p>4 editorial changes. Those that might be of</p> <p>5 interest to you are changes in the persons</p> <p>6 insured section, the addition of the</p> <p>7 automobile definition, and the addition of</p> <p>8 watercraft business to automobile business</p> <p>9 under Definitions."</p> <p>10</p> <p>11 So those changes were so minor and</p> <p>12 had -- really not pertinent at all to -- to</p> <p>13 coverages. I've always taken the position</p> <p>14 that the forms are exactly the same. The</p> <p>15 coverage is certainly the same.</p> <p>16 Q. So you don't really see much of a</p> <p>17 difference than between what was Exhibit-D</p> <p>18 and Exhibit-E?</p> <p>19 A. Well, the differences are listed in</p> <p>20 this letter to the State Board of Insurance</p> <p>21 in Oklahoma City. And I don't really know</p> <p>22 whether G40241-A was filed in New York, as I</p> <p>23 told you a while ago.</p> <p>24 Q. Right.</p> <p>25 A. But the difference in coverages is</p>	<p>1</p> <p>2 A. Page 99?</p> <p>3 Q. Yes.</p> <p>4 A. Of my --</p> <p>5 MR. BRENNAN: The deposition?</p> <p>6 MR. KOTULA: Deposition exhibit,</p> <p>7 sorry.</p> <p>8 BY-MS.YOUNG:</p> <p>9 Q. Yeah, Exhibit-24 that I just gave</p> <p>10 you.</p> <p>11 A. Sorry. I thought you were talking</p> <p>12 about the report. All right.</p> <p>13 Q. Okay. So at line 17, you testified</p> <p>14 that, "Consistent use of the prefix RDU is</p> <p>15 very helpful. I didn't say that you could</p> <p>16 use it to identify a particular policy</p> <p>17 wording."</p> <p>18 And then on -- further down on line</p> <p>19 22, you say, "You can't use RDU to identify</p> <p>20 a particular policy wording. What you can</p> <p>21 do is use it to see that the policy is not</p> <p>22 an RDX prefix policy."</p> <p>23 So as you sit here today, do you</p> <p>24 still contend that the RDU prefix would</p> <p>25 provide you with sufficient information to</p>
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<p>1 nil as it pertains to particularly this case.</p> <p>2</p> <p>3 Q. But do you know if any of those</p> <p>4 iterations of that form were filed in New</p> <p>5 York?</p> <p>6 A. I don't know.</p> <p>7 Q. Okay. And even -- even with the</p> <p>8 RDU prefix, does that tell you what the</p> <p>9 specific language in terms of the policy are?</p> <p>10 A. Well --</p> <p>11 Q. Could -- go ahead. Sorry.</p> <p>12 A. Yes, it does.</p> <p>13 Q. So every form -- every policy issued</p> <p>14 using the RDU prefix would have the same</p> <p>15 policy language, terms and conditions?</p> <p>16 A. Except in Oklahoma, you might have</p> <p>17 the RDU apply to the 41 iteration of the</p> <p>18 policy.</p> <p>19 Q. Right. But if --</p> <p>20 A. If you compared the two, there's no</p> <p>21 difference in the coverage that would be</p> <p>22 provided to these -- these claims.</p> <p>23 Q. Okay. So if you look at your</p> <p>24 deposition testimony in Montello on page 99</p> <p>25 -- it should be the last page of Exhibit-24.</p>	<p>1 know the terms of the specific policy?</p> <p>2 A. Yes, I do. I don't know exactly</p> <p>3 what the context of this is, but, yes, I do</p> <p>4 contend that.</p> <p>5</p> <p>6 Q. The context of your testimony?</p> <p>7 A. Of the Montello.</p> <p>8 Q. In Montello?</p> <p>9 A. Yeah.</p> <p>10 Q. Well, I'll represent to you that it</p> <p>11 involved a missing --</p> <p>12 A. Oh, no, I'm sorry, I understand all</p> <p>13 that. I'm just -- I'm just saying that --</p> <p>14 that notwithstanding that, the fact is you</p> <p>15 can use the term "RDU" to determine -- to</p> <p>16 determine -- the prefix to determine what</p> <p>17 kind of policy it was.</p> <p>18 Q. What kind of policy, but not the</p> <p>19 actual specific policy language of the policy</p> <p>20 that is eventually issued to the insured?</p> <p>21 A. No, I think you can use it to do</p> <p>22 that as well.</p> <p>23 Q. Okay. But you wouldn't know whether</p> <p>24 that policy also was issued with any</p> <p>25 endorsements, correct?</p>



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<p>1</p> <p>2 A. That's right.</p> <p>3 Q. Okay. So even if an RDU policy had</p> <p>4 been issued and it contained the exact same</p> <p>5 policy language as any other RDU policy</p> <p>6 issued by Continental, you still wouldn't</p> <p>7 know whether or not endorsements had been</p> <p>8 attached that would have either limited or,</p> <p>9 perhaps, expanded coverage?</p> <p>10 A. If you didn't have those</p> <p>11 endorsements, that's right. Or if you didn't</p> <p>12 have a list of the endorsements.</p> <p>13 Q. Right. So in this case, if you</p> <p>14 don't have the actual policy, you wouldn't</p> <p>15 know that?</p> <p>16 A. Correct.</p> <p>17 Q. Okay.</p> <p>18 MS. YOUNG: I think I'm done. I</p> <p>19 don't think I have anything further.</p> <p>20 MR. KOTULA: Anyone on the phone</p> <p>21 have any questions?</p> <p>22 MR. LEASURE: None from Hartford.</p> <p>23 MR. BEER: None from us.</p> <p>24 MR. BRENNAN: That's it. I have no</p> <p>25 questions.</p>	<p>1</p> <p>2 UNITED STATES DISTRICT COURT</p> <p>3 NORTHERN DISTRICT OF NEW YORK</p> <p>4</p> <p>5 PACIFIC EMPLOYERS INSURANCE COMPANY,</p> <p>6 Plaintiff,</p> <p>7</p> <p>8 -against- Civil Action No. 1:11-CV-0912</p> <p>9</p> <p>10 TROY BELTING & SUPPLY COMPANY,</p> <p>11 THE HARTFORD INSURANCE COMPANY</p> <p>12 and ABC COMPANIES 1 THROUGH 20</p> <p>13 Defendants.</p> <p>14</p> <p>15 TROY BELTING & SUPPLY COMPANY,</p> <p>16 Third-Party Plaintiff,</p> <p>17</p> <p>18 -against-</p> <p>19</p> <p>20 UNIGARD INSURANCE COMPANY,</p> <p>21 QBE AMERICAS, INC., THE TRAVELERS COMPANIES,</p> <p>22 INC., CONTINENTAL CASUALTY COMPANY, CNA</p> <p>23 FINANCIAL CORPORATION, FIREMAN'S FUND INSURANCE</p> <p>24 COMPANY, THE NORTHRIVER INSURANCE COMPANY,</p> <p>25 CRUM & FORSTER HOLDINGS CORP., LIBERTY MUTUAL</p>
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<p>1</p> <p>2 MR. KOTULA: All right. Folks,</p> <p>3 we're done. We're going to hang up now.</p> <p>4 (Whereupon, the deposition of ROBERT</p> <p>5 NEAL HUGHES concluded at 4:49 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 GROUP, INC., HARLEYSVILLE GROUP, INC.,</p> <p>3 HARLEYSVILLE INSURANCE COMPANY, HARLEYSVILLE</p> <p>4 INSURANCE COMPANY OF NEW YORK, and BERKSHIRE</p> <p>5 MUTUAL INSURANCE GROUP,</p> <p>6 Third-Party Defendants.</p> <p>7</p> <p>8 CERTIFICATE</p> <p>9 DEPOSITION OF ROBERT NEAL HUGHES</p> <p>10 JANUARY 6, 2016</p> <p>11</p> <p>12 I, CHRISTY R. SIEVERT, CSR, RPR, in</p> <p>13 and for the State of Texas, hereby certify</p> <p>14 to the following:</p> <p>15 That the witness, ROBERT NEAL HUGHES,</p> <p>16 was duly sworn by the officer and that the</p> <p>17 transcript of the oral deposition is a true</p> <p>18 record of the testimony given by the witness;</p> <p>19 I further certify that the signature</p> <p>20 of the deponent was requested by the deponent</p> <p>21 or a party and is to be returned within 30</p> <p>22 days from date of receipt of the transcript.</p> <p>23 If returned, the attached Changes and</p> <p>24 Signature Page contains any changes and the</p> <p>25 reasons therefor;</p>



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TELEPHONE DEPOSITION OF ROBERT NEAL HUGHES, JANAUARY 6, 2016

<p style="text-align: right;">Page 269</p> <p>1</p> <p>2 I further certify that I am neither</p> <p>3 counsel for, related to, nor employed by any</p> <p>4 of the parties or attorneys in the action in</p> <p>5 which this proceeding was taken, and further</p> <p>6 that I am not financially or otherwise</p> <p>7 interested in the outcome of the action.</p> <p>8 Subscribed and sworn to on this the</p> <p>9 18th day of January, 2016.</p> <p>10</p> <p>11</p> <p>12</p> <p>13 CHRISTY R. SIEVERT</p> <p>14 CSR, RPR</p> <p>15 Texas CSR 8172</p> <p>16 Expiration Date: 12/31/2016</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 271</p> <p>1</p> <p>2 CERTIFICATE</p> <p>3 STATE OF :</p> <p>4 COUNTY/CITY OF :</p> <p>5 Before me, this day, personally</p> <p>6 appeared, ROBERT NEAL HUGHES, who, being duly</p> <p>7 sworn, states that the foregoing transcript</p> <p>8 of his/her Deposition, taken in the matter,</p> <p>9 on the date, and at the time and place set</p> <p>10 out on the title page hereof, constitutes a</p> <p>11 true and accurate transcript of said</p> <p>12 Deposition.</p> <p>13</p> <p>14 ROBERT NEAL HUGHES</p> <p>15</p> <p>16 SUBSCRIBED and SWORN to before me this</p> <p>17 day of , 2015 in the</p> <p>18 jurisdiction aforesaid.</p> <p>19</p> <p>20 My Commission Expires Notary Public</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 270</p> <p>1</p> <p>2 CAPTION</p> <p>3 The Deposition of ROBERT NEAL HUGHES,</p> <p>4 taken in the matter, on the date, and at the</p> <p>5 time and place set out on the title page</p> <p>6 hereof.</p> <p>7 It was requested that the Deposition</p> <p>8 be taken by the reporter and that same be</p> <p>9 reduced to typewritten form.</p> <p>10 It was agreed by and between counsel</p> <p>11 and the parties that the Deponent will read</p> <p>12 and sign the transcript of said Deposition.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 272</p> <p>1</p> <p>2 ERRATA SHEET</p> <p>3</p> <p>4 RE: Accurate Court Reporting, Inc.</p> <p>5 Case Caption: PACIFIC EMPLOYERS INSURANCE CO.</p> <p>6 VS. TROY BELTING & SUPPLY COMPANY, ET AL.</p> <p>7</p> <p>8 DEPONENT: ROBERT NEAL HUGHES</p> <p>9 DATE: January 6, 2016</p> <p>10</p> <p>11 To the Reporter:</p> <p>12 I have read the entire transcript of my</p> <p>13 Deposition taken in the captioned matter or the</p> <p>14 same has been read to me. I request that the</p> <p>15 following changes be entered upon the record for</p> <p>16 the reasons indicated. I have signed my name</p> <p>17 to the Errata Sheet and the appropriate</p> <p>18 Certificate and authorize you to attach both to</p> <p>19 the original transcript.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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23 SIGNATURE: _____ DATE: _____
24 ROBERT NEAL HUGHES
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